No. 96-270

In the Supreme Court of the United States

OCTOBER TERM, 1996

AMCHEM PRODUCTS, INC., ET AL.,
Petitioners

v.

GEORGE WINDSOR, ET AL.,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

JOINT APPENDIX - VOLUME I

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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GEORGINE, ET AL.

v.

AMCHEM PRODUCTS, INC., ET AL.

v.

ADMIRAL INSURANCE COMPANY, ET AL.

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
5/10/96	Opinion and Judgment of the United States Court of Appeals for the Third Circuit Issued
6/27/96	Order of the United States Court of Appeals for the Third Circuit Denying Petition for Panel Rehearing and Suggestion for Rehearing in banc Issued
7/3/96	Order of the United States Court of Appeals for the Third Circuit Staying Issuance of Mandate Issued

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Civ. A. No. 93-0215

GEORGINE, ET AL.

v.

AMCHEM PRODUCTS, INC., ET AL.

v.

ADMIRAL INSURANCE COMPANY, ET AL.

RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
1/15/93	Class Action Complaint Filed in the United States District Court for the Eastern District of Pennsylvania
1/15/93	Answer Filed
1/15/93	Stipulation of Settlement Filed
2/1/93	Conditional Class Certification Order Filed
9/24/93	Amendment to Stipulation of Settlement Filed
10/6/93	Memorandum Opinion and Order Concerning Subject-Matter Jurisdiction Issued
10/27/93	Memorandum Opinion and Order Approving Notice Plan Issued
2/16/94	Settling Parties' Final Report on Implementation of the Notice Filed

8/16/94	Memorandum Opinion Including Findings of Fact and Conclusions of Law, and Order (approving the settlement and granting final class certification) Issued
9/22/94	Preliminary Injunction and Memorandum Containing Findings of Fact and Conclusions of Law in Support of Issuance of Preliminary Injunction Issued
12/6/95	Amendment to Stipulation of Settlement Filed

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 93-CV-021

EDWARD M. CARLOUGH; PAVLOS KEKRIDES AND NAFSSICA KEKRIDES, HIS WIFE; LAVERNE WINBUN, EXECUTRIX OF THE ESTATE OF JOSEPH E. WINBUN, DECEASED, AND IN HER OWN RIGHT; AMBROSE VOGT, JR. AND JOANNE VOGT, HIS WIFE; CARLOS RAVER AND DOROTHY M. RAVER, HIS WIFE; JOHN A. BAUMGARTNER AND ANNA MARIE BAUMGARTNER, HIS WIFE; TIMOTHY MURPHY AND GAY MURPHY, HIS WIFE; TY T. ANNAS; AND FRED ANGUS SYLVESTER, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,
PLAINTIFFS,

v.

AMCHEM PRODUCTS, INC.; A.P. GREEN INDUSTRIES, INC.; ARMSTRONG WORLD INDUSTRIES, INC.; CERTAINTEED CORPORATION; C.E. THURSTON & SONS, INC.; DANA CORPORATION; FERODO AMERICAN, INC.; FLEXITALLIC, INC.; GAF BUILDING MATERIALS CORPORATION; I.U. NORTH AMERICA, INC.; MAREMONT CORPORATION; NATIONAL GYPSUM COMPANY; NATIONAL SERVICES INDUSTRIES, INC.; NOSROC CORPORATION; PFIZER, INC.; QUIGLEY COMPANY INC.; SHOOK & FLETCHER INSULATION COMPANY; T&N, PLC; UNION CARBIDE CHEMICALS AND PLASTICS CORPORATION; AND UNITED STATES GYPSUM COMPANY,
DEFENDANTS.

CLASS ACTION COMPLAINT

ASBESTOS CASE

Jurisdictional Allocations

1. This Court has diversity-of-citizenship jurisdiction under 28 U.S.C. § 1332. The named Plaintiffs are citizens of the District of Columbia, Florida, Kentucky, Maryland, North Carolina and South Carolina for purposes of 28 U.S.C. § 1332. Each of the Defendants is incorporated in and has its principal place of business in a jurisdiction other than those of which Plaintiffs are citizens.

2. The amount in controversy exceeds $100,000, exclusive of interests and costs, for each and every named Plaintiff and Class Member.

Plaintiffs

3. Plaintiff EDWARD M. CARLOUGH is a citizen of the District of Columbia. During the period of 1949 to 1955, Plaintiff EDWARD M. CARLOUGH worked as an apprentice and then a journeyman sheet metal worker through Union Local 28 at various sites in New York State, including B. Altman Department Store and Radio City Music Hall. As a sheet metal worker, Plaintiff EDWARD M. CARLOUGH worked with or was exposed to asbestos or asbestos-containing products manufactured, supplied, produced, imported, distributed, or sold by the named Defendants.

The asbestos products to which Plaintiff EDWARD M. CARLOUGH was exposed included those manufactured and distributed by GAF BUILDING MATERIALS CORPORATION, UNITED STATES GYPSUM COMPANY, NATIONAL GYPSUM COMPANY, and T&N, plc. While Plaintiff EDWARD M. CARLOUGH has not been diagnosed as having an asbestos-related condition, his exposure to asbestos or asbestos-containing products increases his risk of developing a number of both malignant and nonmalignant asbestos related conditions.

4. Plaintiffs PAVLOS KEKRIDES and NAFSSICA KEKRIDES, his wife, are citizens, and residents of the State of Florida.

Plaintiff PAVLOS KEKRIDES has worked as a painter for Myers and Watters (Painting Contractors) in Bensalem, Pennsylvania from 1966 to 1981. While working for Myers and Watters, Plaintiff PAVLOS KEKRIDES worked at a variety of job

sites, including Sun Oil Refinery, ARCO Refinery, and Westinghouse Electric Corporation.

In the performance of his duties Plaintiff PAVLOS KEKRIDES continually worked with, used, handled and was caused to come into contact with and be exposed to a variety of asbestos products and to the dust and fiber resulting from the ordinary and foreseeable use of those products. The asbestos products to which Plaintiff PAVLOS KEKRIDES was exposed included those manufactured and/or supplied by Defendants GAF BUILDING MATERIALS CORPORATION, ARMSTRONG WORLD INDUSTRIES, INC., UNITED STATES GYPSUM COMPANY, NATIONAL GYPSUM COMPANY, PFIZER, INC. and T&N, plc.

Plaintiff PAVLOS KEKRIDES has contracted malignant mesothelioma as the direct and proximate result of his exposure to asbestos.

5. Plaintiff LAVERNE WINBUN, Executrix of the Estate of JOSEPH E. WINBUN, Deceased, is an [sic] citizen, and resident of the State of Kentucky.

Plaintiff's decedent JOSEPH E. WINBUN was employed by the Louisville & Nashville Railroad and its predecessor from 1943 to 1979. In the course of his employment, he was exposed to the dust and fibers from asbestos-containing products, including products manufactured and/or supplied by Defendants MAREMONT, NOSROC CORPORATION, CERTAINTEED CORPORATION, I.U. NORTH AMERICA, INC., FERODO AMERICA, INC., and GAF BUILDING MATERIALS CORPORATION.

As the direct and proximate result of his exposure to asbestos, Plaintiff's decedent, JOSEPH E. WINBUN, contracted an asbestos-related lung cancer, which ultimately caused his death on November 6, 1991.

6. Plaintiffs AMBROSE VOGT, JR. and JOANNE VOGT, his wife, are citizens, and residents of the State of Maryland.

Plaintiff AMBROSE VOGT, JR. has worked as an insulator and member of Local 11 of the International Association of Heat and Frost Insulators, Asbestos Workers of America since 1971.

Throughout his employment Plaintiff AMBROSE VOGT, JR. was employed at numerous job sites on which he worked for various employers as a member of Local 11 of the International Association of Heat and Frost Insulators, Asbestos Workers of America. In the performance of his duties he continually worked with, used, handled and was caused to come into contact with and be exposed to a variety of asbestos products and to the dust and fibers resulting from the ordinary and foreseeable use of those products.

At different times, Plaintiff AMBROSE VOGT, JR. worked for different contractors and worked near employees of and was exposed to asbestos products supplied by Defendants NATIONAL SERVICES INDUSTRIES, INC., NOSROC CORPORATION, C.E. THURSTON and SONS, INC., and SHOOK AND FLETCHER INSULATION COMPANY.

The asbestos products to which Plaintiff AMBROSE VOGT, JR. was exposed included those manufactured and/or supplied by Defendants ARMSTRONG WORLD INDUSTRIES, INC., GAF BUILDING MATERIALS CORPORATION, FLEXITALLIC, INC., NATIONAL GYPSUM COMPANY, UNITED STATES GYPSUM COMPANY, A.P. GREEN INDUSTRIES, INC., QUIGLEY COMPANY, INC., and DANA CORPORATION.

As the direct and proximate result of his exposure to asbestos, Plaintiff AMBROSE VOGT, JR. is at an increased risk of developing a number of both malignant and nonmalignant asbestos-related conditions, although he has not been diagnosed as suffering from such a condition up until this time.

7. Plaintiffs CARLOS RAVER and DOROTHY M. RAVER, his wife, are citizens and residents of the State of Maryland.

Plaintiff CARLOS RAVER has been employed at the Congoleum Corporation, Residential Flooring Division, in Finksburg, Maryland, since 1963.

In the course of his employment, Plaintiff CARLOS RAVER was exposed to raw asbestos fiber and dust and fiber from asbestos-containing products, including those supplied and/or manufactured by Defendants AMCHEM PRODUCTS, INC. T&N, plc, and UNION CARBIDE CHEMICAL AND PLASTICS CO., INC.

As the direct and proximate result of his exposure to asbestos, Plaintiff CARLOS RAVER has been diagnosed as suffering from a nonmalignant asbestos condition.

8. Plaintiffs JOHN A. BAUMGARTNER and ANNA MARIE BAUMGARTNER, are citizens and residents of the State of Maryland.

Plaintiff JOHN A. BAUMGARTNER served in the United States Navy during the period 1957 through 1961. Throughout that period, he worked aboard ships as a fireman performing boiler maintenance, operation and repair work. Additionally, Plaintiff worked in 1969 and 1970 for Allstate Boiler Repair Company, performing boiler repair work at various job sites, including but not limited to Baltimore Gas and Electric power stations, Baltimore City's Hilton Street Public Schools and other locations in and around the area of Baltimore.

During the period 1970 through 1972, Plaintiff worked at the Maryland Shipbuilding and Drydock Company, performing boiler repair work aboard numerous ships. Additionally, Plaintiff also worked at Bethlehem Steel Corporation's Sparrow's Point steel mill.

Since 1976, Plaintiff has been employed by Potomac Air Gas Company as a pressure pumper. Plaintiff has not worked since July 3, 1992, as a result of his asbestos-caused mesothelioma.

Plaintiff JOHN BAUMGARTNER was frequently exposed to a variety of asbestos-containing materials in the course of his employment, including, but not limited to, products manufactured, and supplied by Defendants ARMSTRONG WORLD PRODUCTS, INC. GAF BUILDING MATERIALS CORPORATION, FLEXITALLIC, INC., A.P. GREEN INDUSTRIES, INC., I.U. NORTH AMERICA, INC., FERODO AMERICA, INC., QUIGLEY COMPANY, INC., and AMCHEM PRODUCTS, INC.

As the direct and proximate result of these exposures to asbestos, Plaintiff JOHN A. BAUMGARTNER suffers from a condition diagnosed on July 24, 1992, as malignant mesothelioma.

9. Plaintiffs TIMOTHY MURPHY and GAY MURPHY, his wife, are citizens, and residents of the State of Kentucky.

Plaintiff TIMOTHY MURPHY has worked as an insulator and member of Local 51 of the International Association of Heat and Frost Insulators, Asbestos Workers of America since 1970.

In the course of his employment, Plaintiff TIMOTHY MURPHY worked for various employers at numerous job sites. In the performance of his duties he continually worked with, used, handled and was caused to come into contact with and be exposed to a variety of asbestos and asbestos-containing products and to the dust and fibers resulting from the ordinary and foreseeable use of those products.

At different times, Plaintiff TIMOTHY MURPHY worked for different contractors in different states and worked near employees of and was exposed to asbestos products supplied by Defendants NOSROC CORPORATION, C.E. THURSTON AND SONS, INC., SHOOK AND FLETCHER INSULATION CO., DANA CORPORATION, A.P. GREEN INDUSTRIES, INC., and NATIONAL SERVICES INDUSTRIES, INC.

The asbestos products to which Plaintiff TIMOTHY MURPHY was exposed included those manufactured and/or supplied by Defendants GAF BUILDING MATERIALS CORPORATION, ARMSTRONG WORLD INDUSTRIES, INC., DANA CORPORATION and A.P. GREEN INDUSTRIES, INC.

As a result of his exposure to asbestos, Plaintiff TIMOTHY MURPHY is at an increased risk of developing a number of both malignant and nonmalignant asbestos-related conditions, although he has not been diagnosed as suffering from such a condition up until this time.

10. Plaintiff TY T. ANNAS is a citizen of North Carolina. From 1950 to 1981, Plaintiff TY T. ANNAS worked at various work sites as an insulator including the Dupont May plant in Camden, South Carolina, and the Dupont plant in Kinston, North Carolina. He worked for North Brothers from 1951 to 1955 and for Daniel Construction Co. from 1955 to 1973 as an insulator at various work sites. Plaintiff TY T. ANNAS worked with, or was exposed to, asbestos or asbestos-containing products mined, manufactured, produced, supplied, imported, distributed, or sold by A.P. GREEN INDUSTRIES, INC., ARMSTRONG WORLD INDUSTRIES, INC., QUIGLEY COMPANY, INC., C.E.

THURSTON AND SONS, INC., DANA CORPORATION, GAF BUILDING MATERIALS CORPORATION, NATIONAL GYPSUM COMPANY, NATIONAL SERVICES INDUSTRIES, INC., NOSROC CORPORATION, SHOOK AND FLETCHER INSULATION COMPANY, T&N plc, and UNITED STATES GYPSUM COMPANY. While Plaintiff TY T. ANNAS has not been diagnosed as having an asbestos-related condition, his exposure to asbestos or asbestos-containing products increases his risk of developing a number of both malignant and nonmalignant asbestos-related conditions.

11. Plaintiff FRED ANGUS SYLVESTER is a citizen of South Carolina. During the period of 1944 to 1964, Plaintiff FRED ANGUS SYLVESTER worked as a sheet metal worker at the Charleston Naval Shipyard. In the course of his employment as a sheet metal worker, he worked with, or was exposed to, asbestos and asbestos-containing products manufactured, produced, supplied, imported, distributed, or sold by A.P. GREEN INDUSTRIES, INC., ARMSTRONG WORLD INDUSTRIES, INC., GAF BUILDING MATERIALS CORPORATION, NATIONAL GYPSUM COMPANY, and UNITED STATES GYPSUM COMPANY. As the direct and proximate result of his exposure to asbestos and asbestos-containing products, Plaintiff FRED ANGUS SYLVESTER suffers from an asbestos-related mesothelioma.

Defendants

12. Defendants, as named herein, refer to those entities listed in Paragraphs 13 through 32 as well as all other predecessors-in-interest to said entities due to continuation of product line, merger, acquisition, stock transfer, buyout, or other contractual agreement.

13. Defendant AMCHEM PRODUCTS, INC. was incorporated under the laws of the Commonwealth of Pennsylvania. AMCHEM PRODUCTS, INC. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

14. Defendant A.P. GREEN INDUSTRIES, INC. is incorporated under the laws of the state of Delaware. Its principal place of business is in Missouri. A.P. GREEN INDUSTRIES, INC. is now or was engaged in the business of mining,

manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

15. Defendant ARMSTRONG WORLD INDUSTRIES, INC. is incorporated under the laws of the Commonwealth of Pennsylvania. Its principal place of business is in Pennsylvania. ARMSTRONG WORLD INDUSTRIES, INC. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

16. Defendant CERTAINTEED CORPORATION is incorporated under the laws of the state of Delaware. Its principal place of business is in Pennsylvania. CERTAINTEED CORPORATION is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

17. Defendant C.E. THURSTON AND SONS, INC. is incorporated under the laws of the Commonwealth of Virginia. Its principal place of business is in Virginia. C.E. THURSTON AND SONS, INC. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

18. Defendant DANA CORPORATION is incorporated under the laws of the Commonwealth of Virginia. Its principal place of business is in Ohio. DANA CORPORATION is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

19. Defendant FERODO AMERICA, INC. in incorporated under the laws of the state of Delaware. Its principal place of business is in Tennessee. FERODO AMERICA, INC. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

20. Defendant FLEXITALLIC, INC. is incorporated under the laws of the state of Delaware. Its principal place of business is in Texas. FLEXITALLIC, INC. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

21. Defendant GAF BUILDING MATERIALS CORPORATION is incorporated under the laws of the state of

Delaware. Its principal place of business is in New Jersey. GAF BUILDING MATERIALS CORPORATION is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

22. Defendant I.U. NORTH AMERICA, INC. is incorporated under the laws of the state of Delaware. I.U. NORTH AMERICA, INC. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

23. Defendant MAREMONT CORPORATION is incorporated under the laws of the state of Delaware. Its principal place of business is in Illinois. MAREMONT CORPORATION is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

24. Defendant NATIONAL GYPSUM COMPANY is incorporated under the laws of the state of Delaware. Its principal place of business is in Texas. NATIONAL GYPSUM COMPANY is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

25. Defendant NATIONAL SERVICES INDUSTRIES, INC. is incorporated under the laws of the state of Delaware. Its principal place of business is in Georgia. Its predecessor, North Brothers, was engaged in the business of distributing and/or supplying asbestos or asbestos-containing products.

26. Defendant NOSROC CORPORATION was incorporated under the laws of the Commonwealth of Pennsylvania. NOSROC CORPORATION and its predecessors-in-interest engaged in the business of distributing and/or supplying asbestos or asbestos-containing products.

27. Defendant PFIZER, INC. is incorporated under the laws of the state of Delaware. Its principal place of business is in New York. PFIZER, INC. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

28. Defendant QUIGLEY COMPANY, INC. is incorporated under the laws of the state of New York. Its principal place of business is in New York. QUIGLEY COMPANY, INC. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

29. Defendant SHOOK & FLETCHER INSULATION CO. is incorporated under the laws of the state of Delaware. Its principal place of business is in Alabama. SHOOK & FLETCHER INSULATION CO. is now or was engaged in the business of distributing and/or supplying asbestos or asbestos-containing products.

30. Defendant T&N, plc is incorporated under the laws of England. Its principal place of business is in England. T&N, plc is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

31. Defendant UNION CARBIDE CHEMICAL AND PLASTICS CO. is incorporated under the laws of the state of New York. Its principal place of business is in Connecticut. UNION CARBIDE CHEMICAL AND PLASTICS CO. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

32. Defendant UNITED STATES GYPSUM CO. is incorporated under the laws of the state of Delaware. Its principal place of business is in Illinois. UNITED STATES GYPSUM CO. is now or was engaged in the business of mining, manufacturing, distributing and/or supplying asbestos or asbestos-containing products.

Class Allegations

33. Plaintiffs bring this action as a class action pursuant to Fed. R. Civ. P. 23 (b)(3) on behalf of themselves and a class of persons similarly situated.

34. The Plaintiff class is defined as follows:

(a) All persons (or their legal representatives) who have been exposed in the United States or its territories (or while working aboard U.S. military, merchant, or passenger ships), either occupationally or through

the occupational exposure of a spouse or household member, to asbestos or to asbestos-containing products for which one or more of the Defendants may bear legal liability and who, as of January 15, 1993, reside in the United States or its territories, and who have not, as of January 15, 1993, filed a lawsuit for asbestos-related personal injury, or damage, or death in any state or federal court against the Defendant(s) (or against entities for whose actions or omissions the Defendant(s) bear legal liability).

(b) All spouses, parents, children, and other relatives (or their legal representatives) of the class members described in paragraph (a) above who have not, as of January 15, 1993, filed a lawsuit for the asbestos-related personal injury, or damage, or death of a class member described in paragraph (a) above in any state or federal court against the Defendant(s) (or against entities for whose actions or omissions the Defendant(s) bear legal liability).

(c) The Defendants in this action are:

AMCHEM PRODUCTS,INC.
A.P. GREEN INDUSTRIES, INC.
ARMSTRONG WORLD INDUSTRIES, INC.
CERTAINTEED CORPORATION
C.E. THURSTON & SONS, INC.

DANA CORPORATION
FERODO AMERICA, INC.
FLEXITALLIC, INC.
GAF BUILDING MATERIALS CORPORATION
I.U. NORTH AMERICA, INC.
MAREMONT CORPORATION
NATIONAL GYPSUM COMPANY
NATIONAL SERVICES INDUSTRIES, INC.

NOSROC CORPORATION
PFIZER, INC.

QUIGLEY COMPANY, INC.
SHOOK & FLETCHER INSULATION COMPANY
T&N, PLC
UNION CARBIDE CHEMICAL AND PLASTICS CORPORATION
UNITED STATES GYPSUM COMPANY

35. The class is sufficiently numerous that joinder of all members is impracticable. The exact number of class members is unknown, but those claimants likely number in the tens of thousands.

36. Plaintiffs will fairly and adequately protect the interests of the class. The interests of the class representatives are coincident with, and not antagonistic to, those of the remainder of the class. In addition, Plaintiffs are represented by experienced and able counsel who have previously litigated numerous personal injury cases involving asbestos exposure and the medical conditions which may arise from such exposures.

37. There are questions of law and fact, relating to Plaintiffs' claims, common to the class, including the health hazards of asbestos, Defendants' knowledge of these hazards, Defendants' failure to test or adequately test their asbestos products, and the lack of any warnings concerning, or providing insufficient warnings concerning, the dangers of asbestos and asbestos-containing products. These questions predominate over any questions affecting individual members.

38. Class treatment is a superior method for the fair and efficient adjudication of the controversies herein described because it permits a large number of injured parties, joinder of whom is impracticable, to prosecute their common claims in a single forum simultaneously, without unnecessary duplication. The class action provides an efficient method whereby the relative rights of Plaintiffs, class members and the Defendants can be fairly managed.

Liability Allegations

Count I: Negligent Failure to Warn

39. The allegations of paragraphs 1 - 38 are incorporated by reference herein.

40. The Defendants, during all times relevant hereto, caused asbestos or asbestos-containing products to be placed in the stream of commerce with the result that all Plaintiffs and their decedents, and those similarly situated, were exposed, occupationally or through a spouse's exposure to asbestos fibers and dust emitted by those products.

41. As the proximate result of exposure to Defendants' asbestos or asbestos-containing products, Plaintiffs and those similarly situated to them have suffered injuries, including the inhalation of asbestos fibers and dust, causing cellular changes in their lungs and other organs and affecting their bodies' ability to resist asbestos-related conditions; and/or the contraction of asbestos-related conditions such as pleural thickening, pleural plaques, asbestosis, respiratory cancer, and mesothelioma; and/or an enhanced risk of contracting such conditions in the future; and/or emotional distress arising out of asbestos-related conditions or the fear of future asbestos-related conditions; and/or the necessity to undergo medical surveillance in order to detect the onset of any future asbestos-related conditions. As a proximate result of these injuries, Plaintiffs and those similarly situated to them, or some of them, have suffered further losses, such as lost wages, past and future medical expenses, funeral and burial expenses, loss of consortium, and pain and suffering. Also, as the proximate result of those conditions, all Plaintiffs and their decedents, and those similarly situated, have suffered injuries, such as loss of support, loss of consortium, emotional distress, loss of life's pleasures, and loss of society.

42. During all times relevant hereto, each and every Defendant knew or should have known of the dangers that exposure to its asbestos or asbestos-containing products could cause conditions such as pleural thickening, pleural plaques, asbestosis, respiratory cancer, and mesothelioma in all Plaintiffs and their decedents, and those similarly situated to them.

43. During all times relevant hereto, each and every Defendant failed to take reasonable steps to provide to all Plaintiffs, their decedents, and those similarly situated to them, (a) adequate warnings of the known or potential dangers from exposure to its asbestos or asbestos-containing products and (b) adequate instructions on how to safely use its asbestos or asbestos-containing

products so as to reduce the risk of asbestos-related conditions. The failure by each and every Defendant to provide such warnings and instructions constitutes negligence and proximately caused the injuries or potential injuries to Plaintiffs, their decedents, and those similarly situated to them as described above.

44. The failure of each and every Defendant to provide Plaintiffs and those similarly situated to them with both adequate warnings of the danger from exposure to its asbestos or asbestos-containing products and adequate instructions on how to use its asbestos or asbestos-containing products so as to reduce the danger was reckless, wanton, and willful and in conscious disregard of Plaintiffs' safety and health.

Count II: Strict Liability

45. The allegations of paragraphs 1 - 44 are incorporated by reference herein.

46. The asbestos or asbestos-containing products mined, manufactured, produced, marketed, sold, or distributed by each and every Defendant were defective and unreasonably dangerous to human health (a) because they were sold without any warnings or adequate warnings as to their dangers and without adequate instructions on how to use the products so as to reduce those dangers, or (b) because Defendants failed to develop alternative products with safer designs even though such products were feasible. Those defects were the proximate cause of the injuries to Plaintiffs and those similarly situated to them, as described in Count 1.

47. The manufacture, production, marketing, sale, or distribution by each and every Defendant of defective asbestos or asbestos-containing products was reckless, wanton, and willful and in conscious disregard of the safety and health of Plaintiffs and those similarly situated to them.

Count III: Breach of Express and Implied Warranty

48. The allegations of paragraphs 1 - 47 are incorporated by reference herein.

49. Each and every Defendant has breached express, as well as implied, warranties of good and merchantable quality and fitness for intended use with respect to its asbestos-containing products.

50. The breach of those warranties has proximately caused injury to Plaintiffs and those similarly situated to them, as described in Count 1.

Count IV: Negligent Infliction of Emotional Distress

51. The allegations of paragrapns 1 - 50 are incorporated by reference herein.

52. During all times relevant hereto, each and every Defendant knew or should have known that exposure to its asbestos or asbestos-containing products could cause emotional distress arising from present asbestos-related conditions or the fear of contracting an asbestos-related condition in all Plaintiffs, their decedents, and those similarly situated to them.

53. During all times relevant hereto, each and every Defendant failed to take reasonable steps to provide to all Plaintiffs, their decedents, and those similarly situated to them, (a) adequate warnings of the danger from exposure to its asbestos or asbestos-containing products and (b) adequate instructions on how to use its asbestos or asbestos-containing products so as to reduce the danger.

54. The failure by each and every Defendant to provide such warnings and instructions constitutes negligence and proximately caused the injuries to Plaintiffs and those similarly situated to them as described above.

55. The failure of each and every Defendant to provide all Plaintiffs, their decedents, and those similarly situated to them, with both adequate warnings of the potential dangers from exposure to its asbestos or asbestos-containing products and adequate instructions on how to use its asbestos or asbestos-containing products, thus subjecting Plaintiffs and those similarly situated to them to emotional distress arising from present asbestos-related conditions or the fear of contracting asbestos-related conditions, was reckless, wanton, and willful and in conscious disregard of Plaintiffs' safety and health.

Count V: Enhanced Risk of Future Condition

56. The allegations of paragraphs 1 - 55 are incorporated by reference herein.

57. During all times relevant hereto, each and every Defendant knew or should have known that exposure to its asbestos

or asbestos-containing products could cause an enhanced risk of contracting asbestos-related conditions in all Plaintiffs, their decedents, and those similarly situated to them.

58. During all times relevant hereto, each and every Defendant failed to take reasonable steps to provide to all Plaintiffs, their decedents, and those similarly situated to them, (a) adequate warnings of the known or potential dangers from exposure to its asbestos or asbestos-containing products and (b) adequate instructions on how to use its asbestos or asbestos-containing products so as to reduce the danger.

59. The failure by each and every Defendant to provide such warnings and instructions constitutes negligence and proximately caused the injuries to Plaintiffs and those similarly situated to them as described above.

60. The failure of each and every Defendant to provide Plaintiffs and those similarly situated to them with both adequate warnings of the danger from exposure to its asbestos or asbestos-containing products and adequate instructions on how to use its asbestos or asbestos-containing products, thus subjecting Plaintiffs and those similarly situated to them to the enhanced risk of contracting asbestos-related conditions, was reckless, wanton, and willful and in conscious disregard of Plaintiffs' safety and health.

Count VI: Medical Monitoring

61. The allegations of paragraphs 1 - 60 are incorporated by reference herein.

62. During all times relevant hereto, each and every Defendant knew or should have known of the danger that exposure to its asbestos or asbestos-containing products would cause Plaintiffs and those similarly situated to them to be exposed for significant periods of time to dangerous levels of asbestos, which was known by Defendants to be a cause of cancer and other serious conditions.

63. During all times relevant hereto, each and every Defendant knew or should have known that exposure to its asbestos or asbestos-containing products could cause an enhanced risk of contracting asbestos-related conditions in all Plaintiffs, their decedents, and those similarly situated to them, which would make

it necessary for them to undergo medical surveillance in order to monitor for the development of asbestos-related conditions and permit early medical diagnosis or treatment of any such condition.

64. During all times relevant hereto, each and every Defendant knew or should have known of the danger that exposure to its asbestos or asbestos-containing products would make it necessary for all Plaintiffs, their decedents, and those similarly situated to them to undergo medical surveillance in order to monitor for the development of asbestos-related conditions and permit early medical diagnosis or treatment of any such conditions.

65. The failure of each and every Defendant to provide all Plaintiffs, their decedents, and those similarly situated to them, with both adequate warnings of the danger from exposure to its asbestos or asbestos-containing products and adequate instructions on how to use its asbestos or asbestos-containing products has made it necessary that Plaintiffs and those similarly situated undergo regular medical surveillance in order to monitor for the development of asbestos-related conditions and permit early medical diagnosis or treatment of any such conditions.

66. The failure of each and every Defendant to provide all Plaintiffs, their decedents, and those similarly situated to them, with both adequate warnings of the danger from exposure to its asbestos or asbestos-containing products and adequate instructions on how to safely use its asbestos or asbestos-containing products rendered it necessary for Plaintiffs and those similarly situated to undergo medical surveillance. Such conduct by each and every Defendant was reckless, wanton, and willful and in conscious disregard of Plaintiffs' safety and health.

Count VII: Civil Conspiracy

67. The allegations of paragraphs 1 - 66 are incorporated by reference herein.

68. Defendants, individually and in concert with each other, reached an agreement or tacit understanding to do the aforesaid acts with the unlawful intent of marketing asbestos and asbestos-containing products in an unlawful manner by willfully, knowingly, and fraudulently suppressing knowledge about the dangers of asbestos, and by marketing without adequate testing and without adequate warnings.

69. The aforesaid acts, and similar acts, were committed in furtherance of this conspiracy to market asbestos and asbestos-containing products in an unlawful manner.

70. In furtherance of the unlawful conspiracy between Defendants, one or more of the co-conspirators committed overt acts that were intended to effectuate the goals of the conspiracy.

71. Defendants' combination provided Defendants with additional power to inflict injury, harm, and damages upon Plaintiffs; such power would not have otherwise existed absent such combination.

72. Plaintiffs were directly and proximately harmed by Defendants' tortious combination and conspiracy as alleged herein and the act of one co-conspirator, therefore, should be deemed the act of all.

Prayer for Relief

WHEREFORE, Plaintiffs pray that the Court grant the following relief:

A. Plaintiffs and other members of the class recover the general and special compensatory damages determined to have been sustained by each of them respectively;

B. Plaintiffs and other members of the class recover punitive damages from Defendants in an amount to be determined;

C. Plaintiffs and other members of the class recover the costs of this suit; and

D. The Court grant such other, further and different relief as may be deemed just and proper.

Jury Demand

The named plaintiffs request trial by jury on all issues triable to a jury.

DATED: January 15, 1993

Respectfully submitted,

/s/ GENE LOCKS
Gene Locks, Esquire
Pennsylvania Supreme Court
I.D. No. 12969
Greitzer and Locks
1500 Walnut Street

/s/ RONALD L. MOTLEY
Ronald L. Motley, Esquire
Joseph F. Rice, Esquire
Ness, Motley, Loadholt,
Richardson & Poole
151 Meeting Street, Suite 600
Charleston, SC 29404

/s/ JOSEPH F. RICE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

ANSWER

Defendants [collectively referred to as the Center for Claims Resolution Defendants or "CCR Defendants" and each Defendant individually, where appropriate] answer the Complaint as follows:

FIRST DEFENSE

1. - 2. CCR Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 1-2 of the Complaint.

3. - 11. CCR Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraphs 3-11 of the Complaint.

12. CCR Defendants deny the allegations of Paragraph 12 of the Complaint.

13. - 32. CCR Defendants admit the allegations of Paragraphs 13-32 of the Complaint as they pertain to allegations of incorporation and principal place of business. All other allegations are denied.

33. - 38. CCR Defendants admit the allegations of Paragraphs 33-38 of the Complaint insofar as they relate to the certification of a settlement class. CCR Defendants specifically deny that the questions of law and fact as set forth in Paragraph 37 are common to the class or that they predominate over any questions affecting individual members; and otherwise deny the allegations with respect to maintenance of a litigation class.

39. In response to Paragraph 39 of the Complaint, CCR Defendants incorporate by reference their responses to Paragraphs 1-38.

40. CCR Defendants are without sufficient information to form a belief as to the truth of the allegations of Paragraph 40 of the Complaint and therefore deny same.

41. - 44. CCR Defendants deny the allegations of Paragraphs 41-44 of the Complaint.

45. In response to Paragraph 45 of the Complaint, CCR Defendants incorporate by reference their responses to Paragraphs 1-44.

46. - 47. CCR Defendants deny the allegations of Paragraphs 46-47 of the Complaint.

48. In response to Paragraph 48 of the Complaint, CCR Defendants incorporate by reference their responses to Paragraphs 1-47.

49. - 50. CCR Defendants deny the allegations of Paragraphs 49-50 of the Complaint.

51. In response to Paragraph 51 of the Complaint, CCR Defendants incorporate by reference their responses to Paragraphs 1-50.

52. - 55. CCR Defendants deny the allegations of Paragraphs 52-55 of the Complaint.

56. In response to Paragraph 56 of the Complaint, CCR Defendants incorporate by reference their responses to Paragraphs 1-55.

57. - 60. CCR Defendants deny the allegations of Paragraphs 57-60 of the Complaint.

61. In response to Paragraph 61 of the Complaint, CCR Defendants incorporate by reference their responses to Paragraphs 1-60.

62. - 66. CCR Defendants deny the allegations of Paragraphs 62-66 of the Complaint.

67. In response to Paragraph 67 of the Complaint, CCR Defendants incorporate by reference their responses to Paragraphs 1-66.

68. - 72. CCR Defendants deny the allegations of Paragraphs 68-72 of the Complaint.

SECOND DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The plaintiffs' claims are barred by the applicable statute of limitations or statutes of repose, or by the doctrine of laches.

FOURTH DEFENSE

The plaintiffs' losses, if any, were caused by plaintiffs' or plaintiffs' decedents' assumption of the risk.

FIFTH DEFENSE

The plaintiffs' losses, if any, were caused by plaintiffs' or plaintiffs' decedents' contributory or comparative negligence or fault.

SIXTH DEFENSE

CCR Defendants were not negligent, did not furnish a product unreasonably dangerous, and did not make or breach any express or implied warranties.

SEVENTH DEFENSE

Plaintiffs' claims of breach of warranty are barred by plaintiffs' failure to give prompt notice of any breach of warranty as is required by the applicable state Uniform Commercial Code.

EIGHTH DEFENSE

At all times material hereto, the state of the medical and industrial art was such that there was no generally accepted or recognized knowledge of any unavoidably unsafe, inherently dangerous, or hazardous character or nature of asbestos containing products when used in the manner and for the purpose described by plaintiffs. Therefore, CCR Defendants were under no duty to know of such character or nature or to warn plaintiffs or others similarly situated.

NINTH DEFENSE

The injuries and illnesses, if any, sustained by the plaintiffs were caused or contributed to by the neglect, misuse, fault, and want of due care of plaintiffs or by others for whose actions or omissions or breach of legal duty CCR Defendants are not liable.

TENTH DEFENSE

Plaintiffs' claims, if any, are preempted by the regulations of the Occupational Health and Safety Administration and other applicable federal laws.

ELEVENTH DEFENSE

Some or all of plaintiffs' claims are barred by plaintiffs' lack of privity with these answering CCR Defendants.

TWELFTH DEFENSE

Plaintiffs' claims for punitive damages are unconstitutional.

WHEREFORE, CCR Defendants pray that the Plaintiffs' Complaint be dismissed with prejudice and that the Court award CCR Defendants such other relief as is appropriate.

Respectfully submitted,

/s/ JOHN G. GAUL # 34257

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Attorneys for Defendants
Represented by the Center for Claims Resolution

DATED: January 15, 1993

[Certificate of Service Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

JOINT MOTION OF PLAINTIFFS AND CCR MEMBERS FOR CONDITIONAL CLASS CERTIFICATION

Plaintiffs Edward M. Carlough; Pavlos Kekrides and Nafssica Kekrides, his wife; Laverne Winbun, Executrix of the Estate of Joseph E. Winbun, deceased; Ambros Vogt, Jr. and Joanne Vogt, his wife; Carlos Raver and Dorothy M. Raver, his wife; John A. Baumgartner and Anna Marie Baumgartner, his wife; Timothy Murphy and Gay Murphy, his wife; Ty T. Annas; and Fred Angus Sylvester, on behalf of themselves and all others similarly situated, and the members of the Center for Claims Resolution ("CCR")[1] hereby move for conditional certification of a class action for purposes of settlement, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. In support of their motion, plaintiffs and the CCR members state as follows:

1. Plaintiffs and the CCR members have engaged in lengthy and intense negotiations in an attempt to settle the claims of all persons exposed to asbestos or asbestos-containing products for which the CCR members bear legal liability, but who have not yet filed suit.

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[1] The CCR members are Amchem Products, Inc.; A.P. Green Industries, Inc.; Armstrong World Industries, Inc.; Certainteed Corp.; C.E. Thurston & Sons, Inc.; Dana Corp.; Flexitallic Gasket Co., Inc.; GAF Corp.; I.U. North America, Inc.; Maremont Corp.; National Gypsum Co.; National Services Industries, Inc.; Nosroc Corp.; Ferodo America, Inc. (formerly Nuturn Corp.); Pfizer, Inc.; Quigley Co., Inc.; Shook & Fletcher Insulation Co.; T&N, PLC; Union Carbide Corp.; and United States Gypsum Co.

2. Those negotiations were ultimately successful and resulted in a Stipulation of Settlement. A copy of this Stipulation is being filed with the Court together with this Motion for Conditional Class Certification.

3. A class complaint has been filed by the above plaintiffs on behalf of all persons who meet the following definitions, but excluding those persons who opt out of this class action pursuant to the opt-out provisions in Rule 23(b)(3) of the Federal Rules of Civil Procedure, as implemented by order of the Court in this action:

(a) All persons (or their legal representatives) who have been exposed in the United States or its territories (or while working aboard U.S. military, merchant, or passenger ships), either occupationally or through the occupational exposure of a spouse or household member, to asbestos or to asbestos-containing products for which one or more of the defendants may bear legal liability and who, as of January 15, 1993, reside in the United States or its territories, and who have not, as of January 15, 1993, filed a lawsuit for asbestos-related personal injury, or damage, or death in any state or federal court against the defendant(s) (or against entities for whose actions or omissions the defendant(s) bear legal liability).

(b) All spouses, parents, children, and other relatives (or their legal representatives) of the class members described in paragraph (a) above who have not, as of January 15, 1993, filed a lawsuit for the asbestos-related personal injury, or damage, or death of a class member described in paragraph (a) above in any state or federal court against the defendant(s) (or against entities for whose actions or omissions the defendant(s) bear legal liability).

(c) The defendants in this action are:

AMCHEM PRODUCTS, INC.
A.P. GREEN INDUSTRIES, INC.
ARMSTRONG WORLD INDUSTRIES, INC.
CERTAINTEED CORPORATION
C.E. THURSTON & SONS, INC.

DANA CORPORATION
FERODO AMERICA, INC.

FLEXITALLIC, INC.
GAP BUILDING MATERIALS CORPORATION
I.U. NORTH AMERICA, INC.
MAREMONT CORPORATION
NATIONAL GYPSUM COMPANY
NATIONAL SERVICES INDUSTRIES, INC.

NOSROC CORPORATION
PFIZER, INC.
QUIGLEY COMPANY, INC.
SHOOK & FLETCHER INSULATION COMPANY
T&N, PLC
UNION CARBIDE CHEMICAL AND PLASTICS CORPORATION
UNITED STATES GYPSUM COMPANY

4. Certification of a conditional opt-out class action, pursuant to Rule 23(b)(3), for purposes of settlement would provide the most effective means for fairly and efficiently resolving plaintiffs' claims and assuring prompt payment in an orderly fashion that maximizes the money available for claimants, while minimizing transaction costs.

5. The conditional class action proposed here meets the requirements of Rules 23(a)(2) and 23(b)(3), since the plaintiff class is so numerous that joinder of all members would be impracticable; the question, now common to the class, is whether the proposed settlement is fair and reasonable and was reached through a fair process; the claims of the representative plaintiffs are typical of the claims of the other class members; the representative plaintiffs have no interests antagonistic to those of the other class members; and the proposed class counsel are highly qualified to represent the proposed class based upon their proven capabilities and extensive experience in the asbestos litigation.

6. The proposed settlement would not adversely impact the interests of any of the CCR members' co-defendants in the asbestos litigation.

7. The proposed settlement would prevent significant future asbestos-related litigation from being filed in either the federal or state courts, would allow the defendants to address the pending

cases in an orderly fashion, and would serve the best interests of the parties and of the public.

* * * *

For the foregoing reasons, plaintiffs and the CCR members request that their Joint Motion for Conditional Certification of the Proposed Class for Purposes of Settlement be granted.

Respectfully submitted,

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Attorneys for Defendants Represented by the Center for Claims Resolution

DATED: January 15, 1993

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

PROPOSED ORDER GRANTING CONDITIONAL CLASS CERTIFICATION FOR PURPOSES OF SETTLEMENT

Upon consideration of the Joint Motion of Plaintiffs and the CCR Members for Conditional Class Certification for Purposes of Settlement, the memorandum in support thereof, and any opposition thereto, it is hereby

ORDERED that the Joint Motion for Conditional Class Certification for Purposes of Settlement is GRANTED pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, and a class is certified including all persons who meet the following definitions, but excluding those persons who opt out of this class action pursuant to the opt-out provisions in Rule 23 (b) (3) of the Federal Rules of Civil Procedure, as implemented by order of the Court in this action:

(a) All persons (or their legal representatives) who have been exposed in the United States or its territories (or while working aboard U.S. military, merchant, or passenger ships), either occupationally or through the occupational exposure of a spouse or household member, to asbestos or to asbestos-containing products for which one or more of the defendants may bear legal liability and who, as of January 15, 1993, reside in the United States or its territories, and who have not, as of January 15, 1993, filed a lawsuit for asbestos-related personal injury, or damage, or death in any state or federal court against the defendant(s) (or against entities for whose actions or omissions the defendant(s) bear legal liability).

(b) All spouses, parents, children, and other relatives (or their legal representatives) of the class members described

in paragraph (a) above who have not, as of January 15, 1993, filed a lawsuit for the asbestos-related personal injury, or damage, or death of a class member described in paragraph (a) above in any state or federal court against the defendant(s) (or against entities for whose actions or omissions the defendant(s) bear legal liability).

(c) The defendants in this action are:

AMCHEM PRODUCTS, INC.
A.P. GREEN INDUSTRIES, INC.
ARMSTRONG WORLD INDUSTRIES, INC.
CERTAINTEED CORPORATION
C.E. THURSTON & SONS, INC.

DANA CORPORATION
FERODO AMERICA, INC.
FLEXITALLIC, INC.
GAF BUILDING MATERIALS CORPORATION
I.U. NORTH AMERICA, INC.
MAREMONT CORPORATION
NATIONAL GYPSUM COMPANY
NATIONAL SERVICES INDUSTRIES, INC.

NOSROC CORPORATION
PFIZER, INC.
QUIGLEY COMPANY, INC.
SHOOK & FLETCHER INSULATION COMPANY
T&N, PLC
UNION CARBIDE CHEMICAL AND PLASTICS CORPORATION
UNITED STATES GYPSUM COMPANY

ORDERED that plaintiffs Edward M. Carlough; Pavlos Kekrides and Nafssica Kekrides, his wife; Laverne Winbun, Executrix of the Estate of Joseph E. Winbun, deceased; Ambros Vogt, Jr. and Joanne Vogt, his wife; Carlos Raver and Dorothy M. Raver, his wife; John A. Baumgartner and Anna Marie Baumgartner, his wife; Timothy Murphy and Gay Murphy, his wife; Ty T. Annas; and Fred Angus Sylvester, are hereby designated as the representative plaintiffs in this class action; and further

ORDERED that since the Court finds that it is in the best interests of the class to appoint counsel for class representatives at this time, Gene Locks, of Greitzer and Locks, in Philadelphia, Pennsylvania, Ronald L. Motley and Joseph F. Rice, of Ness, Motley, Loadholt, Richardson & Poole, in Charleston, South Carolina, are hereby appointed as class counsel in this class action; and further

ORDERED that all class members who wish to opt out of this Rule 23 (b) (3) class action may do so by completing an Exclusion Request Form as designated by this Court and sending it (or other written notification of the Members' intention to exclude himself or herself from the class) to the Clerk of this Court, at 601 Market Street, 2609 U.S. Courthouse, Philadelphia, Pennsylvania 19106 by , 1993; and further

ORDERED that all parties or persons wishing to file briefs in support of the proposed settlement must do so by , 1993. All parties or persons wishing to file briefs in opposition to the proposed settlement must do so by , 1993. All parties or persons who have filed briefs in support of the proposed settlement may file reply briefs by , 1993; and further

ORDERED that hearing(s) to determine the fairness, adequacy and reasonableness of the proposed settlement shall be held on , 1993, at 601 Market Street, U.S. Courthouse, Philadelphia, Pennsylvania 19106, and further

ORDERED that notice shall be given of this conditional class certification and of the fairness hearing(s) pursuant to Rules 23 (c)(2) and 23(e), in accordance with a separate order to be issued by this Court.

IT IS SO ORDERED this day of , 1993.

Charles R. Weiner
United States District Judge

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

MEMORANDUM IN SUPPORT OF PLAINTIFFS' AND CCR MEMBERS' JOINT MOTION FOR CONDITIONAL CLASS CERTIFICATION

I. INTRODUCTION

Plaintiffs Edward M. Carlough; Pavlos Kekrides and Nafssica Kekrides, his wife; Laverne Winbun, Executrix of the Estate of Joseph E. Winbun, deceased; Ambros Vogt, Jr. and Joanne Vogt, his wife; Carlos Raver and Dorothy M. Raver, his wife; John A. Baumgartner and Anna Marie Baumgartner, his wife; Timothy Murphy and Gay Murphy, his wife; Ty T. Annas; and Fred Angus Sylvester, on behalf of themselves and all others similarly situated, and defendants, members of the Center for Claims Resolution ("CCR"),[1] have moved for conditional certification of an opt-out class action for purposes of settlement, pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure. They submit this memorandum in support of that joint motion.

The CCR members are presently defendants in more than 80,000 asbestos personal injury suits in the state and federal courts. Projections by experts indicate that, if the asbestos personal injury litigation continues to be handled within the normal tort system, the

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[1] The CCR members are Amchem Products, Inc.; A.P. Green Industries, Inc.; Armstrong World Industries, Inc.; Certainteed Corp.; C.E. Thurston & Sons, Inc.; Dana Corp.; Flexitallic Gasket Co., Inc.; GAF Corp.; I.U. North America, Inc.; Maremont Corp.; National Gypsum Co.; National Services Industries, Inc.; Nosroc Corp.; Ferodo America, Inc. (formerly Nuturn Corp.); Pfizer, Inc.; Quigley Co., Inc.; Shook & Fletcher Insulation Co.; T&N, PLC; Union Carbide Corp.; and United States Gypsum Co.

CCR members can expect to be named as defendants in thousands of additional cases over the next 10 years.

In an effort to find a fair and more efficient means of resolving these future cases, the CCR members and plaintiffs have engaged in a lengthy and intense negotiation process, beginning in February 1 1991. Those negotiations ultimately resulted in a Stipulation of Settlement, a copy of which was filed with the Court along with this Motion.

As a result of reaching this Stipulation of Settlement, the parties here soak conditional certification of an opt-out class action, for settlement purposes only, on behalf of the following class:

(a) All persons (or their legal representatives) who have been exposed in the United States or its territories (or while working aboard U.S. military, merchant, or passenger ships), either occupationally or through the occupational exposure of a spouse or household member, to asbestos or to asbestos-containing products for which one or more of the defendants may bear legal liability and who, as of January 15, 1993, reside in the United States or its territories, and who have not, as of January 15, 1993, filed a lawsuit for asbestos-related personal injury, or damage, or death in any state or federal court against the defendant(s) (or against entities for whose actions or omissions the defendant(s) bear legal liability).

(b) All spouses, parents, children, and other relatives (or their legal representatives) of the class members described in paragraph (a) above who have not, as of January 15, 1993, filed a lawsuit for the asbestos-related personal injury, or damage, or death of a class member described in paragraph (a) above in any state or federal court against the defendant(s) (or against entities for whose actions or omissions the defendant(s) bear legal liability).

(c) The defendants in this action are:

AMCHEM PRODUCTS, INC.
A.P. GREEN INDUSTRIES, INC.
ARMSTRONG WORLD INDUSTRIES, INC.
CERTAINTEED CORPORATION
C.E. THURSTON & SONS, INC.

DANA CORPORATION
FERODO AMERICA, INC.
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QUIGLEY COMPANY, INC.
SHOOK & FLETCHER INSULATION COMPANY
T&N, PLC
UNION CARBIDE CHEMICAL AND PLASTICS CORPORATION
UNITED STATES GYPSUM COMPANY

The class action and settlement, if approved, would resolve the claims of all such persons who do not opt out of this class action pursuant to the opt-out provisions in Rule 23(b)(3) of the Federal Rules of Civil Procedure, providing a non-judicial resolution of virtually all of their claims without further resort to the court system, while establishing an expeditious and equitable administrative system for providing them with compensation.

II. THE PROPOSED SETTLEMENT

The settlement negotiated by class counsel and the CCR members would establish an administrative process by which class members could apply to the CCR for compensation awards. Claimants who meet certain exposure and medical criteria would be compensated based upon the nature and severity of the medical condition that they, or their decedents, suffered as well as other traditional tort factors. Medical criteria are established by the Stipulation of Settlement pursuant to which qualifying claimants would be classified into the categories of mesothelioma, lung cancer, "other" cancers (primary colon-rectal, laryngeal, esophageal, or stomach), or non-malignant conditions. A range of values has been established for each of these medical categories, based upon the CCR members' historical settlements of like claims. There are also special procedures for compensating claimants who

present "exceptional" medical claims or "extraordinary" damages claims. The CCR would waive the statute of limitations as to any claim that was not time-barred as of the date the class action complaint was filed. Claimants who failed to satisfy the medical criteria to be compensated for any current asbestos-related condition would be free to file for compensation at such time as they might develop such a compensable condition. The terms of the settlement are set forth in full in the stipulation.

III. A CONDITIONAL CLASS SHOULD BE CERTIFIED FOR PURPOSES OF SETTLEMENT ONLY.

A. It Is Appropriate to Certify a Conditional Class For Purposes of Settlement

The procedure proposed here — the certification of a conditional class for purposes of settlement only — is not a new one. Such classes have been approved on numerous occasions, both in the United States Court of Appeals for the Third Circuit and elsewhere. See *Girsh* v. *Jepson*, 521 F.2d 153, 155 n.3 (3d Cir. 1975) ("There is no impediment to determining a class action for the purpose of settlement only.") (citing *Greenfield* v. *Villager Indus., Inc.*, 483 F.2d 824, 832 (3d Cir. 1973)); *In re Beef Indus., Antitrust Litig.*, 607 F.2d 167, 173-78 (5th Cir. 1979) (Wisdom, J.); *Weinberger* v. *Kendrick*, 698 F.2d 61, 72-73 (2d Cir. 1982) (Friendly, J.); *Manual For Complex Litigation 2d* § 30.45, at 242-44 (1985).[2] Class actions for settlement purposes have also been endorsed in the mass tort context, both by the Fourth Circuit in the Dalkon Shield litigation, *In re A.H. Robins, Co., Inc.*, 880 F.2d 709, 738-40 (4th Cir. 1989); and by Judge Weinstein in his opinion reformulating the Manville Trust, *In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. 710, 851-52 (E. & S.D.N.Y. 1991) *rev'd on other grounds*, *Findley* v. *Blinken*, No. 91-5068(L) (2d Cir. Dec. 4, 1992).

[2] For further cases within the Third Circuit, see *Fisher Bros.* v. *Phelps Dodge Indus., Inc.*, 604 F. Supp. 446, 448-49 (E.D. Pa. 1985); *Kushner* v. *First Pennsylvania Corp.*, 74 F.R.D. 606, 607 (E.D. Pa. 1977), *aff'd mem.*, 577 F.2d 726 (3d Cir. 1978); *Philadelphia Housing Auth.* v. *American Radiator & Standard Sanitary Corp.*, 322 F. Supp. 834, 835 (E.D. Pa. 1971), *aff'd as modified on other grounds sub nom. Ace Heating & Plumbing Co., Inc.* v. *Crane Co.*, 453 F.2d 30 (3d Cir. 1971).

Indeed, the standards for determining whether a class should be certified are considerably more lenient when certification is sought for purposes of settlement, rather than for purposes of litigation. See *In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. at 816 (quoting *In re A.H. Robins Co.*, 85 B.R. 373, 378 (E.D. Va. 1988) ("[T]he requirements under Rule 23 are more easily satisfied in the settlement context than in the more complex litigation context."); *In re First Commodity Corp. of Boston Customer Accounts Litig.*, 119 F.R.D. 301, 308 (D. Mass. 1987); 2 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 11.27, (3d ed. 1992).

As the court held in *In re A.H. Robins*, 85 B.R. at 379, settlement "eliminates, as a practical matter, uncommon or atypical individual issues" and therefore "eliminates obstacles frequently present in tort actions where plaintiffs seek to certify a class." Since the parties, through their stipulation of settlement, have eliminated the need to address the usual issues of liability, causation, and damages, "[t]he primary issue which the Court must ultimately determine in a settlement context is whether the class's claims were fairly and vigorously advocated in non-collusive negotiations reaching a fair and reasonable settlement." *Id.* at 378.

Accordingly the present motion for certification of a conditional class for purposes of settlement should be granted so that a determination may be made as to whether the proposed settlement should be approved.

B. The Requirements of Rules 23(a) and 23(b)(3) Are Met Here.

In order to qualify as a class action under Rule 23(b)(3), an action must meet the requirements of both Rule 23(a) and Rule 23(b)(3). Rule 23(a) requires that:

> "(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class."

In addition, Rule 23(b)(3) requires a finding

> "that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy."

As we now show, all of these requirements are met in the instant case.

1. *Numerosity*. There can be little question that the class members here are "so numerous that joinder of all members is impracticable." As noted above, projections by the CCR members' accounting experts indicate that, absent the proposed settlement, they may expect to be sued in thousands of asbestos personal injury cases over the next 10 years. In *In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. at 817, the court had no difficulty in finding the numerosity requirement settled in the circumstances of the Manville Trust proceeding; indeed, Judge Weinstein implied that the numerosity requirement was particularly well-satisfied where a class of future claimants is involved, since such a group perforce involves a large number of individuals who, because their identities are unknown, cannot be joined except through the class action procedure. *Id.*

Judge Weinstein also stated that the numerosity requirement should be found to have been satisfied where individual resolution of the claims would place a heavy burden on state and federal courts. *Id.* The Court of Appeals did not disagree with this finding. Plainly, the instant case involves just these circumstances. Consequently, the numerosity requirement is satisfied here.

2. *Commonality*. In a Rule 23(b)(3) class action, the requirement of common issues is two-fold. Rule 23(a)(2) requires that there be "questions of law or fact common to the class," and Rule 23(b)(3) requires that these common questions "predominate over any questions affecting only individual [class] members." As observed above, the fact that the parties have already agreed upon a settlement of the cases eliminates the issues of liability, causation, and damages that raise so many disparate issues among the cases. See *In re E. & S. Dist. Asbestos Litig.*, 129 B.R. at 819 ("[t]he

existence of a proposed Settlement * * * greatly minimizes the significance of any noncommon issues").

Hence, where, as here, there in a stipulation of settlement, the primary issue that remains is whether the proposed settlement is fair and reasonable, and whether it was reached through a negotiation process that was not collusive or otherwise improper. *Id.* at 818 ("most fundamental" question is whether the procedure by which the claimants are to be compensated must be changed to provide "equitable compensation to all beneficiaries"); see also *In re A.H. Robins*, 85 B.R. at 378. As this issue of fairness is common to each of the proposed class members' claims, the requirement of commonality is satisfied here.

3. *Typicality*. To satisfy the requirement of typicality, there must be a showing that the claims or defenses of the representative parties are typical of the claims or defenses of the class. The purpose of this requirement in to ensure that "absent class members receive adequate protection of their interests." *In re E. & S. Dist. Asbestos Litig.*, 129 B.R. at 819-20. It does not matter if the representatives' injuries differ in degree, or are not precisely equivalent to the types of diseases experienced by class members. *In re School Asbestos Litig.*, 789 F.2d 996 (3d Cir. 1986) (upholding certification of nationwide schools asbestos property class despite differing degrees of property damages among class members); *Jenkins* v. *Raymark Indus., Inc.*, 109 F.R.D. 269, 272 (E.D. Tex. 1985) (in asbestos personal injury class action, named plaintiffs' injuries "may differ in degree" from those of other class members), *aff'd*, 782 F.2d 468 (5th Cir. 1986).

The representative plaintiffs here, like the remainder of the class members, include persons with a range of asbestos exposures and a variety of asbestos-related medical conditions. Like the other class members, the representative plaintiffs have asserted, among them, claims against each of the CCR members. Moreover, like the rest of the class, the named plaintiffs are from a variety of jurisdictions, and represent a variety of occupations. Consequently, the requirement of typicality is met here.

4. *Adequacy of Representation*. The adequacy of representation requirement is comprised of two components: first, the named plaintiffs may not have interests antagonistic to those of

the remainder of the class and, second, class counsel must be qualified, experienced, and able to handle the proposed litigation. *In re Fine Paper Antitrust Litig.*, 617 F.2d 22, 27 (3d Cir. 1980); *General Telephone Co.* v. *Falcon*, 457 U.S. 147, 157 n.13 (1982); *In re E. & S. Dist. Asbestos Litig.*, 129 B.R. at 820-21 (quoting *Eisen* v. *Carlisle & Jacquelin*, 391 F.2d 555, 562 (2d Cir. 1968), *vacated on other grounds*, 417 U.S. 156 (1974)).

As discussed above, there would be no conflict of interests between the representative plaintiffs and the remainder of the class members. Hence, the first component of the adequacy inquiry is satisfied.

The second component of the inquiry is similarly met here. Class counsel, Gene Locks, of Greitzer and Locks, in Philadelphia, Pennsylvania, and Ronald L. Motley and Joseph F. Rice, of Ness, Motley, Loadholt, Richardson & Poole, in Charleston, South Carolina, are experienced and prominent members of the plaintiffs' asbestos bar. They have participated in the asbestos litigation since its infancy and were responsible for much of the original discovery work that developed important evidence for plaintiffs. See Paul Brodeur, *Outrageous Misconduct: The Asbestos Industry on Trial* 124, 135-43 (1985). Through affiliated counsel, Mr. Motley and Mr. Rice represent some thousands of plaintiffs in pending asbestos personal injury litigation. Mr. Locks' firm also represents thousands of plaintiffs in numerous jurisdictions. Clearly, both Mr. Locks, Mr. Motley, and Mr. Rice are eminently qualified to handle this proceeding on behalf of the plaintiff class.

In short, as the above discussion shows, the requirements for certification of a conditional opt-out class under Rule 23(b)(3) are satisfied here. Therefore, plaintiff's and the CCR members' joint motion for certification of a conditional class should be granted.

C. The Proposed Timeline for This Proceeding

Assuming that the Court grants this motion, plaintiffs and the CCR members propose that the Court first enter the accompanying order, certifying a conditional class action for the purposes of settlement. The proposed order would also designate the named plaintiffs as the representative plaintiffs for the class, appoint Messrs. Locks, Motley, and Rice as class counsel, and set forth a proposed timeline for this proceeding.

By a separate order, the Court would provide that combined Rule 23(c)(2) and 23(e) notice should be issued, and would establish the procedures to be followed in giving such notice. The Court would establish a bar date approximately three months after the notice campaign was to begin, by which date class members would be required to elect to opt out of the class, if they chose to do so. The Court would also set deadlines for the submission of briefs in support of the proposed settlement, briefs in opposition to the proposed settlement, and reply briefs.

Finally, the Court should schedule the fairness hearing or hearings on the proposed settlement. In order to facilitate this hearing, as set forth in our separate Joint Motion to Appoint a Special Master, the parties propose that the Court appoint a Special Master to supervise the pre-hearing proceedings and discovery process incident to the fairness hearing.

IV. CONCLUSION

For the foregoing reasons, plaintiffs and the CCR members request that their joint motion for certification of the proposed conditional class for purposes of settlement be granted.

Respectfully submitted,

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DATED: January 15, 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

STIPULATION OF SETTLEMENT BETWEEN THE CLASS OF CLAIMANTS AND DEFENDANTS REPRESENTED BY THE CENTER FOR CLAIMS RESOLUTION

[Table of Contents Omitted]

PREAMBLE

This Stipulation of Settlement is made and entered into as of January 15, 1993, by and between the Plaintiff Class Representatives (as defined below) who represent the Class of Claimants (as defined below) and the defendants represented by the Center For Claims Resolution ("CCR Defendants") (as defined below), all parties acting by and through their respective undersigned counsel.

WHEREAS:

1. The Class of Claimants is a class of individuals on whose behalf the Plaintiff Class Representatives have filed a Class Action Complaint against the CCR Defendants in the United States District Court for the Eastern District of Pennsylvania, and who have sought certification of that class as an opt-out class under Rule 23(b)(3) of the Federal Rules of Civil Procedure;

2. The Center For Claims Resolution ("CCR") represents a group of twenty companies that are defendants in asbestos personal injury litigation and that are named as defendants in the Class Action Complaint filed by the Plaintiff Class Representatives on behalf of the Class of Claimants;

3. For more than fifteen years, thousands of individuals exposed to asbestos or asbestos-containing products have filed lawsuits alleging personal injury and damage in the state and

federal courts against the CCR Defendants and against many other defendants;

4. This litigation has resulted in extensive discovery concerning the potential liability of the CCR Defendants and other defendants, as well as full consideration of the legal and factual basis, including medical issues, underlying each individual asbestos plaintiff's personal injury lawsuit;

5. The vast majority of the asbestos personal injury lawsuits brought against the CCR Defendants and others in the past fifteen years has been settled without trial, although a small percentage has been tried to verdict, with some plaintiffs and some defendants prevailing;

6. The volume of asbestos personal injury lawsuits has been extremely large, and has impacted the ability of some courts to process the suits in a prompt, efficient, and fair manner;

7. Compensation to asbestos personal injury claimants has been distributed in some instances on an inequitable basis, often dependent more upon the trial docket and procedure in the court where the case is filed than upon the individual plaintiff's factual circumstances;

8. Despite significant success in reducing litigation costs through coordinated claims handling organizations (such as the CCR), plaintiffs and defendants have spent, and continue to spend, enormous resources contesting both liability and damages, allocating responsibility among the parties, and litigating insurance coverage for the liability;

9. The expenditures necessary to process and resolve many thousands of asbestos lawsuits have contributed to more than ten major asbestos defendants filing for bankruptcy reorganization. Because some of these defendants represent a significant portion of the traditional liability share in asbestos personal injury cases, and many jurisdictions apply the principle of joint and several liability, these bankruptcy filings have increased costs substantially, caused significant delays to plaintiffs, and created financial pressures on the remaining solvent defendants;

10. Class Counsel each has a decade or more of experience in the litigation of asbestos personal injury cases. They have

conducted a thorough investigation into the law and facts relating to matters met forth in the complaint;

11. There are approximately 77,000 asbestos personal injury claims currently pending against the CCR Defendants in the state and federal courts. The goal and intent of the CCR Defendants is to resolve all these presently pending claims over the next five years;

12. The procedures set forth in this Stipulation would provide a fair, flexible, speedy, cost-effective, and assured method of compensating claimants who have exposure to asbestos or asbestos-containing products manufactured or supplied by the CCR Defendants, and who have contracted or will in the future contract an asbestos-related medical condition. Thus, this settlement provides considerable benefit to the Class of Claimants, while avoiding costly litigation of difficult and contentious issues;

13. Based on extensive analysis of the law and facts at issue in this complaint, other factors and considerations concerning asbestos litigation, and the fair, flexible, speedy, cost-effective, and assured procedures set forth below for compensating the Class of Claimants, Plaintiff Class Representatives, on advice of Class Counsel, have determined that settlement with the CCR Defendants on the terms set forth below would be fair, adequate, and reasonable, and thus in the best interests of the Class of Claimants;

14. Based on extensive analysis of the law and facts at issue in this complaint, the other considerations concerning the asbestos litigation set forth above, and the fair, flexible, speedy, cost-effective, and assured procedures set forth below for compensating the Class of Claimants, the CCR Defendants have determined that settlement with the Class of Claimants on the terms set forth below would be fair, adequate, and reasonable, and thus in the best interests of the CCR Defendants;

It is therefore stipulated and agreed by and among the Plaintiff Class Representatives, the undersigned Class Counsel for the Class of Claimants, the undersigned CCR Defendants, and the undersigned Counsel for the CCR Defendants that, subject to Court approval of this Stipulation of Settlement as a good-faith, ethical, fair, adequate, and reasonable settlement, and to the satisfaction of the other conditions set forth herein, this action shall be settled as

of the date of the execution of this Stipulation of Settlement on the terms and conditions set forth below.

AGREEMENT

I. Definitions

For purposes of this Stipulation, the following terms shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and vice versa.

A. "Additional Releasee(s)" shall mean individuals and entities in addition to the CCR Defendant(s) that are to be released pursuant to this Stipulation. Such Additional Releasee(s) shall include (1) each CCR Defendant(s)' present and former foreign and domestic parents, subsidiaries, and affiliates; (2) the foreign and domestic predecessors, successors, distributors, vendees, transferees, insurers, and assigns of each CCR Defendant or of (1) above; and (3) the present, former, and subsequent officers, directors, agents, servants, shareholders, and employees of each CCR Defendant or of (1) or (2) above. With respect to Additional Releasee(s) that are not individuals, the liability of Additional Releasee(s) that is to be included and released under this Stipulation must arise 1) out of products, actions or omissions of a CCR Defendant; or 2) out of actions or omissions of an Additional Releasee for which a CCR Defendant bears legal liability.

B. "CCR" shall mean the nonstock, not-for-profit corporation maintained by the CCR Defendants (or any successor entity) for the processing of claims pursuant to this Stipulation of Settlement and for other purposes. The CCR's current address is 116-300 Village Boulevard, Princeton, New Jersey 08540. The CCR's current Chief Executive Officer is Lawrence Fitzpatrick; its current Chief Operating Officer is Michael F. Rooney.

C. "CCR Defendant(s)" shall mean any one or more of the following companies that are defendants named in the Class Action Complaint: Amchem Products, Inc.; A.P. Green Industries, Inc.; Armstrong World Industries, Inc.; CertainTeed Corp.; C.E. Thurston and Sons, Incorporated; Dana Corp.; Flexitallic, Inc.; GAF Corp.; I.U. North America, Inc.; Maremont Corp.; National Gypsum Company; National Service Industries, Inc.; Nosroc Corp.; Ferodo America, Inc. (formerly Nuturn Corp.); Pfizer, Inc.; Quigley Co. Inc.; Shook & Fletcher Insulation Co.; T&N plc;

Union Carbide Chemicals and Plastics Company Inc.; and United States Gypsum Co.

D. "Claim" shall mean any and all claims by any Settlement Class Member against the CCR Defendant(s) or the Additional Releasee(s) for any asbestos-related personal injury or damage, including any claim based on, arising out of, or related to premises ownership or vicarious liability. A Claim under this Stipulation shall include, without limitation, any and all claims for 1) personal injury, damage, or death and all forms of mental or emotional harm, that is based on, arises out of, or relates to exposure to asbestos (i.e., actinolite, amosite, anthophyllite, chrysotile, crocidolite or tremolite fibers) or to asbestos-containing products; 2) loss of support, services, consortium, companionship, society, and other valuable services made by spouses, parents, children, or other relatives, however such claims are denominated, including, without limitation, wrongful death or survival actions, that are based on, arise out of, or relate to the asbestos exposure set forth in this Paragraph D; and 3) punitive, aggravated, or exemplary damages of any sort that are based on, arise out of, or relate to exposure to asbestos or to asbestos-containing products. A Claim under this Stipulation shall not include, however, any claim by an employee or the employee's representative against an employer when that claim is or would be subject to any workers' compensation or similar statutory provision. Accordingly, as set forth in Part XV of this Stipulation, this Stipulation is not intended to, and shall not, affect any otherwise applicable provision of a workers' compensation or similar statutory provision that bars a Settlement Class Member from filing a tort suit against the CCR Defendant(s) or the Additional Releasee(s).

E. "Claimant" shall mean any individual Settlement Class Member (or legal representative of a Settlement Class Member) who submits a Claim for processing under this Stipulation. Claimant shall also refer to Claimant's Counsel to the extent that the Claimant is represented by individual counsel.

F. "Claimant's Counsel" shall mean any attorney who represents a Claimant for purposes of submitting a Claim for processing under this Stipulation. Claimant's Counsel shall not mean Class Counsel unless the Claimant retains Class Counsel to

represent him or her for purposes of submitting a Claim for processing under this Stipulation.

G. "Class Action Complaint" shall mean the complaint filed by the Class of Claimants against the CCR Defendant(s) in the United States District Court for the Eastern District of Pennsylvania.

H. "Class Counsel" shall mean Gene Locks of Greitzer and Locks of Philadelphia, Pennsylvania, and Ronald L. Motley and Joseph F. Rice of Ness, Motley, Loadholt, Richardson & Poole, P.A., of Charleston, South Carolina.

I. "Class of Claimants" or "Settlement Class Members" shall mean 1) all Exposed Persons, or their legal representatives, who, as of the date of filing of the Class Action Complaint, reside in the United States or its territories, and who have not, as of that same date, filed a Pending or Prior Lawsuit; and 2) all spouses, parents, children, or other relatives of such Exposed Persons, or their legal representatives, who, as of the date of the filing of the Class Action Complaint, have not filed a Pending or Prior Lawsuit related to the personal injury, damage, or death of an Exposed Person. The class shall not include any persons who meet these definitions but who opt out of this class action pursuant to Fed. R. Civ. P. 23(c)(2), as implemented by order of the Court in this class action.

J. "Compensable Medical Category" shall mean the four medical categories set forth in Part V of this Stipulation, which are Mesothelioma, Lung Cancer, other Cancer, and Non-malignant Conditions.

K. "Counsel for the CCR Defendants" or "CCR Counsel" shall include undersigned counsel as well as any other attorneys employed by the CCR as counsel.

L. "Court" shall refer to the United States District Court for the Eastern District of Pennsylvania.

M. "Exceptional Medical Claim" shall mean a Claim identified as such pursuant to the procedures in Part V.D. below.

N. "Exposed Person" shall mean any person who has been exposed in the United States or its territories (or while working aboard U.S. military, merchant, or passenger ships) either

occupationally or through the occupational exposure of a spouse or household member, to asbestos or to asbestos-containing products for which one or more of the CCR Defendants may bear legal liability.

O. "Extraordinary Claim" shall mean a Claim selected as such pursuant to the procedures in Part IX of this Stipulation.

P. "Pending or Prior Lawsuit" shall mean a suit for asbestos-related personal injury, damage, or death filed in any state or federal court against the CCR Defendant(s) or the Additional Releasee(s) at any time prior to the date that the Class Action Complaint is filed.

Q. "Plaintiff Class Representatives" shall mean the individual plaintiffs in the Class Action Complaint.

R. "Qualifying Claim" shall mean any Claim submitted to the CCR for processing that is determined to qualify for compensation under this Stipulation.

II. Exclusive Remedy

All Claims shall be submitted to the CCR in writing by the Claimant in accordance with the procedures set forth in or developed pursuant to this Stipulation. Submission of Claims under this Stipulation shall be the exclusive remedy of all Settlement Class Members for any Claim against the CCR Defendant(s) and the Additional Releasee(s), and a Claim submitted hereunder shall be in lieu of any other remedy or right of action against the CCR Defendant(s) and the Additional Releasee(s) for such Claims, except as provided in Parts XVI and XXII of this Stipulation with respect to any CCR Defendant that defaults under or withdraws from this Stipulation. Accordingly, no CCR Defendant(s) or Additional Releasee(s) shall be subject to liability or expense of any kind to any Settlement Class Member with respect to any Claim, other than as set forth in this Stipulation; and each Settlement Class Member, upon the Court's entry of an order approving the Stipulation as a good faith, ethical, fair, adequate, and reasonable settlement, and concluding that the Class of Claimants has received adequate notice and has been adequately and ethically represented by Class Counsel, shall be enjoined by that order from instituting or maintaining any claim or action for asbestos-related personal injury or damage against the CCR Defendant(s) or the Additional

Releasee(s) in any state or federal court, other than as set forth in this Stipulation. The Court shall retain jurisdiction over this case and shall use its equitable powers to enforce this Stipulation.

III. Eligibility for Compensation

A. In order to qualify for compensation under this Stipulation, the Claimant must submit to the CCR (1) evidence that the Exposed Person has had sufficient occupationally-related exposure, as defined in Part IV of this Stipulation, to asbestos or to an asbestos-containing product manufactured or supplied by the CCR Defendant(s) or the Additional Releasee(s); and (2) evidence that the Exposed Person meets the medical criteria for one of the Compensable Medical Categories, as defined in Part V of this Stipulation, or should be identified as an Exceptional Medical Claim, under the procedures set forth in Part V.D. of this Stipulation. In addition, as set forth in Part VI of this Stipulation, the CCR may reject any Claim submitted for compensation under this Stipulation that was time-barred, under the standards and burden of proof that would have applied, as of the date that the Class Action Complaint was filed, to a lawsuit by the Claimant for asbestos-related personal injury in an appropriate forum.

B. **Required Information**

1. The Claimant shall provide to the CCR, on forms agreed to by Class Counsel and Counsel for the CCR Defendants, the following information concerning the Exposed Person: name; address; social security number; date of birth; date of death (if applicable); marital status and number and age of dependents; spouse's name and social security number; occupation; smoking history; year of first exposure to any asbestos or asbestos-containing products; year of last exposure to asbestos or asbestos-containing products; identification of all asbestos or asbestos-containing products manufactured or supplied by the CCR Defendant(s) or the Additional Releasee(s) and others to which the Exposed Person was exposed, the work sites where such exposures occurred, and the years of such exposure, including specific descriptive comments concerning the duration and intensity of such exposure; any medical reports or records of the Exposed Person that relate to any alleged asbestos-related condition; the Compensable Medical Category, under Part V of this Stipulation,

for which the Claimant believes the Claim qualifies or for which the Claimant intends to apply to the Exceptional Medical Panel for identification as an Exceptional Medical Claim under Part V.D. of this Stipulation; the names, addresses, and telephone numbers for all physicians and hospitals involved in diagnosing, treating, testing, counseling, or consulting with the Exposed Person concerning any medical condition within the last five years; and five signed copies of a release and authorization, in a form acceptable to Counsel for the CCR Defendants and Class Counsel, allowing the CCR to obtain any and all medical, employment, and other relevant records for the Exposed Person, to the extent that those records could be obtained in discovery by the CCR Defendant(s) if the Claimant filed a lawsuit for asbestos-related injury against such CCR Defendant(s) in an appropriate forum. The Claimant may amend any information provided to the CCR under this Paragraph B at any time before the Claimant accepts a settlement offer under Parts VIII-IX of this Stipulation; provided, however, that if the amended information may significantly affect the CCR's evaluation of the Claim under the procedures set forth in Part VIII.B.2. of this Stipulation, then the CCR at its option may treat that Claim as submitted to the CCR on the date that such amended information was received by the CCR.

2. The CCR shall evaluate the information obtained concerning the Claim as a whole, and may decide to process the Claim no further until more complete information is provided (pursuant to Paragraph E of this Part), only if the information provided is materially incomplete so that no decision concerning whether the Claim qualifies for compensation can reasonably be made.

3. All testimonial information provided to the CCR in connection with a Claim, other than information in any medical reports or records, shall be made under oath, or by sworn affidavit, or by written declaration subscribed to as true under penalty of perjury.

4. Any Claimant-specific or CCR Defendant-specific information obtained by the CCR under this Paragraph B shall be confidential and used only for processing the Claim pursuant to this Stipulation. Accordingly, such information may be used by the CCR, the CCR Defendant(s), their insurers, the Claimant, and

Claimant's Counsel only in connection with the Claim at issue, and shall not be furnished to any other person or entity, or used for any other purpose by the CCR, the CCR Defendant(s), their insurers, the Claimant, or Claimant's Counsel.

5. Any release for an Exposed Person's medical records shall allow Counsel for the CCR to obtain written medical records only, and shall not allow Counsel for the CCR to discuss, without the Claimant's consent, the Exposed Person's medical condition with any of the Exposed Person's treating physicians.

6. In the event that the CCR seeks to obtain medical, employment, or other relevant, discoverable records concerning an Exposed Person, it shall give notice to the Claimant, and shall, upon request and at the Claimant's expense, furnish copies of all records obtained to the Claimant.

C. The Claimant may also indicate, at the time that the Claim is submitted, that, assuming that the Claim qualifies for compensation under this Stipulation, the Claimant elects the "simplified payment procedures" set forth in Part VIII.B.1. of this Stipulation; the "individualized payment procedures" set forth in Part VIII.B.2. of this Stipulation; or that the Claimant nominates the Claim for Extraordinary Claim treatment pursuant to the procedures in Part IX of this Stipulation.

D. As soon as practicable and, in any event, no later than ninety (90) days after receiving each Claim, the CCR shall notify the Claimant whether 1) the Claim qualifies for compensation under this Stipulation; 2) the Claim does not qualify for compensation under this Stipulation; or 3) because the information submitted concerning the Claim is materially incomplete, no determination concerning whether the Claim qualifies for compensation can reasonably be made. To the extent that the CCR reasonably believes that it cannot resolve, on the basis of the available medical information, whether an Exposed Person meets the medical criteria for one of the Compensable Medical Categories as defined in Part V of this Stipulation, the CCR may, at its option and expense, require the Exposed Person to undergo appropriate, reasonable, non-invasive, and non-excessive medical examination or testing (excluding any sort of computed tomography (CT) scan).

E. For each Claim where the CCR notifies the Claimant that the information submitted is materially incomplete, the CCR shall at the same time notify the Claimant of the missing information, and shall not further process the Claim until complete information is provided.

F. For each Claim where the CCR notifies the Claimant that the Claim does not qualify for compensation under this Stipulation, the CCR shall at the same time notify the Claimant as to the reasons for non-qualification. The Claimant shall have sixty (60) days from the receipt of that notice to 1) seek reconsideration of the CCR's decision by submitting a written statement to the CCR giving grounds for reconsideration; 2) submit additional information concerning the Claim to the CCR; or 3) invoke the dispute resolution procedures, as set forth in Part IV.B., Part V.C., or Part VI.B. of this Stipulation (depending on the reasons for non-qualification of the Claim). If the Claimant seeks reconsideration of the CCR's decision or submits additional information concerning the Claim to the CCR, the CCR shall, as soon as practicable and, in any event, no later than ninety (90) days after receipt of the request for reconsideration or of additional information concerning the Claim, respond to the Claimant in the manner specified in Paragraph D of this Part.

G. At the time a Claim is submitted, the Claimant may indicate that the Claimant concedes that the Claim cannot meet the requirements of any Compensable Medical Category, as defined in Part V of this Stipulation, and that the Claimant intends to apply to the Exceptional Medical Panel for identification as an Exceptional Medical Claim under Part V.D. of this Stipulation. In that case, the CCR shall, as soon as practicable and, in any event, no later than ninety (90) days after receiving such a claim, give notice to the Claimant whether the Claim meets the exposure and timeliness criteria of Parts IV and VI of this Stipulation. If the information provided concerning the Claim is materially incomplete, or if the CCR determines that the Claimant does not meet the exposure or timeliness criteria of Parts IV and VI of this Stipulation, the procedures in Paragraphs E and F of this Part shall apply. If, instead, the Claimant is determined to have met the exposure and timeliness criteria of Parts IV and VI of this Stipulation, the Claimant may apply to the Exceptional Medical Panel for

identification as an Exceptional Medical Claim, pursuant to the procedures set forth in Part V.D. of this Stipulation. In addition, a Claimant with a Claim that is determined by the CCR not to qualify for payment solely for failure to meet the requirements of any Compensable Medical Category may apply to the Exceptional Medical Panel for identification as an Exceptional Medical Claim. As set forth in Part V.D. of this Stipulation, any Claim ultimately identified as an Exceptional Medical Claim shall be deemed to meet the medical criteria of the given Compensable Medical Category.

H. All submissions or applications required from a Claimant under this Part III, or under any other provisions of this Stipulation, shall be mailed or delivered to the CCR at its then-current address. If the submission must be considered by some other entity, the CCR shall forward the submission to that entity.

IV. Sufficient Occupationally-Related Exposure

A. **Evidence**. Evidence of sufficient occupationally-related exposure shall mean evidence of exposure to asbestos or an asbestos-containing product that was manufactured or supplied by the CCR Defendant(s) or by the Additional Releasee(s), and which occurred while the Exposed Person was engaged in carrying out his job responsibilities, or, in the case of a spouse or household member of a person having such occupational exposure, was secondary to such occupational exposure. The evidence of such exposure must be sufficient to show exposure to the asbestos or asbestos-containing product on a regular basis over some extended period of time in proximity to where the Exposed Person actually worked (the so-called "frequency, regularity, and proximity" standard), or an equivalent exposure if exposure secondary to occupational exposure is claimed. If, however, a Claimant is able to show, under the law that would be applicable at the time the Claim is submitted to the CCR to a lawsuit by that Claimant for asbestos-related personal injury or damage in an appropriate forum, that the evidence of asbestos exposure required to present a jury issue would be measured by a different standard from the "frequency, regularity, and proximity" standard, then that different legal standard shall govern with respect to that Claim.

B. **No Prejudice**. The fact that the CCR agrees that an Exposed Person meets the exposure requirements set forth in

Paragraph A of this Part is not and shall not be deemed as an admission that a CCR Defendant bears legal liability for such asbestos or asbestos-containing products with respect to any other Claimant or with respect to any other proceeding or proceedings. The fact that the CCR agrees to pay such a Claim shall not be admissible in any other proceeding or proceedings.

C. **Disputes**

1. Any dispute as to whether a Claim meets the exposure requirements set forth in Paragraph A of this Part shall be referred for decision to a single arbitrator assigned by rotation from the List of Arbitrators developed pursuant to Part XXVI.B. of this Stipulation.

2. The arbitrator shall render a decision as soon as practicable based on written submissions from the parties, unless live testimony is appropriate. All testimonial evidence submitted to the arbitrator shall be made under oath or by sworn affidavit, or by written declaration subscribed to as true under penalty of perjury. The arbitrator shall determine whether the Claimant's evidence of exposure satisfies the applicable exposure standard by a preponderance of the evidence. The arbitrator's decision shall finally determine the issue.

3. If the arbitrator determines that the Claimant's evidence of exposure satisfies the applicable exposure standard, and the Claim has otherwise been deemed to qualify for compensation under this Stipulation, the Claim shall be governed by the procedures in Parts VIII-X of this Stipulation.

V. Compensable Medical Categories

A. **General Provisions**. For purposes of this Stipulation, the following terms shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and vice versa.

1. "Board-certified Pathologist" shall mean a physician currently licensed to practice medicine in the District of Columbia or in one or more U.S. states or territories and who currently holds primary certification in anatomic pathology, or combined anatomic and clinical pathology, from the American

Board of Pathology, and whose professional practice is principally in the field of pathology and involves regular evaluation of pathological materials obtained from surgical and post-mortem specimens.

2. "Board-certified Internist" shall mean a physician currently licensed to practice medicine in the District of Columbia or in one or more U.S. states or territories and who is currently certified by the American Board of Internal Medicine in internal medicine.

3. "Board-certified Pulmonary Specialist" shall mean a physician currently licensed to practice medicine in the District of Columbia or in one or more U.S. states or territories and who is currently certified by the American Board of Internal Medicine in the subspecialty of pulmonary disease.

4. "Board-certified Radiologist" shall mean a physician currently licensed to practice medicine in the District of Columbia or in one or more U.S. states or territories and who is currently certified by the American Board of Radiology.

5. "Board-certified Oncologist" shall mean a physician currently licensed to practice medicine in the District of Columbia or in one or more U.S. states or territories and who is currently certified by the American Board of Internal Medicine in the subspecialty of medical oncology.

6. "Certified B-reader" shall mean an individual who has successfully completed the x-ray interpretation course sponsored by the National Institute of Occupational Safety and Health (NIOSH), and whose NIOSH-certification is up-to-date.

7. "ILO Grade" shall mean the radiological ratings for the presence of lung changes by chest x-ray as established from time to time by the International Labour Office (ILO), and as currently set forth in "Guidelines for the Use of ILO International

Classification of Radiographs of Pneumoconioses" (1980).

8. "Chest X-rays" shall mean chest radiographs taken in four views (Posterior-Anterior, Lateral, and Left and Right Obliques) within one year of the date that the Claim is submitted to the CCR (or within one year of death, if the Exposed Person is deceased), and graded quality 1 for reading according to the criteria established by the ILO; provided, however, that in situations where the Claimant is unable to provide quality 1 chest x-rays because of death or because of an inability to have new chest x-rays taken, then in those situations only, chest x-rays graded quality 2 will be acceptable.

9. Unless otherwise agreed to by CCR Counsel, whose consent shall not be unreasonably withheld, "Pulmonary Function Testing" shall mean spirometry, lung volume, and diffusing capacity ("DLCO") testing that substantially conforms to quality criteria established by the American Thoracic Society ("ATS") and is performed on equipment which substantially meets ATS standards for technical quality and calibration, all as set forth in 20 C.F.R. 718.103 and Appendix B thereto or in the ATS guidelines in 144 *American Review of Respiratory Disease* 1202-18 (1991). The CCR may examine all back-up data pertaining to Pulmonary Function Testing of an Exposed Person to ensure that these quality criteria and standards have been satisfied.

10. Unless otherwise agreed to by CCR Counsel, whose consent shall not be unreasonably withheld, "Predicted Values" for spirometry and lung volumes shall be those published by Morris, *Clinical Pulmonary Function Testing*, 2d Edition, Intermountain Thoracic Society (1984), or others that are substantially equivalent. Each subject must be tested with and without inhaled bronchodilators, with best values taken. Unless otherwise agreed to by

CCR Counsel, whose consent shall not be unreasonably withheld, "Predicted Values" for diffusing capacity shall be those published by *Miller, et al.*, 127 *American Review of Respiratory Disease*, 270-77 (1983), or others that are substantially equivalent. Predicted Values for any pulmonary function testing shall be corrected for race, ethnic origin, or other relevant factors, as appropriate.

11. "Basilar Crackles," sometimes called "rales," shall mean those sounds described in American Thoracic Society, "The Diagnosis of Nonmalignant Diseases Related to Asbestos," 134 *American Review of Respiratory Disease*, 363, 366 (1986), and shall be observed in accordance with the criteria set forth therein.

12. "Latency Period" shall mean the period from the date of the Exposed Person's first significant exposure to asbestos or an asbestos-containing product to the date of manifestation of the condition claimed.

13. "Manifestation" shall mean either the date of the actual diagnosis of the condition claimed, or the date upon which the clinical records and available tests indicate that the condition could reasonably have been diagnosed by a competent physician.

B. **Compensable Medical Categories**. Compensable medical categories under this Stipulation shall be as follows:

1. **Mesothelioma**

The Mesothelioma category shall have the following requirements:

a. A diagnosis of malignant mesothelioma with a primary site in the pleura or peritoneum, derived from appropriate tissue, and verified using standardized and accepted criteria of microscopic morphology, and/or a variety of appropriate staining techniques, by either i) two Board-certified Pathologists, or ii) one Board-certified Pathologist

who is, at the time that the diagnosis is verified, a member of the U.S.-Canadian Mesothelioma Reference Panel; and

b. Exposure sufficient to meet the minimum exposure requirements set forth in Part IV of this Stipulation occurring at least ten (10) years prior to the Manifestation of the mesothelioma.

2. **Lung Cancer**

The Lung Cancer category shall have the following requirements:

a. A diagnosis by a Board-certified Pathologist, Pulmonary Specialist, or Oncologist of primary lung carcinoma; and

b. Exposure sufficient to meet the minimum exposure requirements set forth in Part IV of this Stipulation occurring at least twelve (12) years prior to Manifestation of the lung cancer; and

c. One of the following:

i. Evidence of a Non-Malignant Condition sufficient to meet the requirements of Paragraph B.4 of this Part; or

ii. Chest X-rays which, in the opinion of a Certified B-reader, demonstrate asbestos-related bilateral pleural plaques or asbestos-related bilateral pleural thickening; and evidence of occupational exposure to asbestos for the following exposure periods in the following occupations and trades:

(1) Eight (8) years of exposure for insulators, pipefitters, boilermakers, shipfitters, steamfitters, or persons in other trades performing similar functions;

(2) Ten (10) years of exposure for shipyard workers, power house workers, refinery workers, individuals employed primarily in engine and boiler rooms aboard ships, or

persons in other trades performing similar functions;

(3) Fifteen (15) years of exposure for general construction workers, maintenance workers, steel workers, general manufacturing workers, or persons in other trades performing similar functions;

(4) One (1) year of exposure for World War II shipyard workers; and

(5) Six (6) months of exposure for workers in manufacturing plants handling raw asbestos fibers.

For purposes of calculating the years of exposure prescribed above in this Paragraph ii, each single year of exposure prior to 1972 shall be counted as one year; each single year of exposure from 1972 through 1979 shall be counted as one-half year; and exposures after 1979 shall not be counted. For each year from 1972 forward, however, for which a Claimant can demonstrate, by a preponderance of the evidence, that his or her exposure to asbestos in his or her occupation or trade (such as in a rip-out of existing asbestos-containing products) was, during a substantial portion of that year, in excess of the 8-hour time-weighted average airborne concentration for asbestos exposure prescribed by the Occupational Safety and Health Administration (OSHA) at that time, then that year shall count as one full year for purposes of calculating the years of exposure prescribed in this Paragraph ii.

3. **Other Cancer**

The Other Cancer category shall have the following requirements:

a. A diagnosis by a Board-certified Pathologist, Pulmonary Specialist, or Oncologist (as appropriate for the type of cancer claimed) of primary colon-rectal, laryngeal, esophageal, or stomach cancer; and

b. Exposure sufficient to meet the minimum exposure requirements set forth in Part IV of this Stipulation occurring at least twelve (12) years prior to Manifestation of the cancer; and

c. Evidence of a Non-Malignant Condition sufficient to meet the requirements of Paragraph B.4. of this Part.

4. **Non-Malignant Conditions**

The Non-Malignant Conditions category shall have the following requirements:

a. A Latency Period of at least twelve (12) years, and either the clinical or pathological evidence of Asbestosis prescribed in Paragraphs B.4.b. and B.4.c. of this Part, or the evidence of Bilateral Pleural Thickening described in Paragraph B.4.d. of this Part.

b. **Clinical Evidence of Asbestosis**

A diagnosis of pulmonary asbestosis by a Board-certified Internist or Pulmonary Specialist based on the following minimum objective criteria:

i. Chest X-rays which, in the opinion of a Certified B-reader, show small irregular opacities of ILO Grade 1/0 and Pulmonary Function Testing and physical examination that show either:

(1) FVC $<80\%$ of predicted with FEV-1/FVC $\geq 75\%$ (actual value);

or

(2) TLC $<80\%$ of predicted, *with* either DLCO $\leq 76\%$ of predicted or bilateral Basilar Crackles, *and* also the absence of any probable explanation for this DLCO result *or* crackles finding other than the presence of lung disease; or

ii. Chest X-rays which, in the opinion of a Certified B-reader (or of an individual who at

one time was a Certified B-reader and who has not subsequently failed the examination for certification or recertification as a B-reader), show small irregular opacities of ILO Grade 1/1 or greater; and Pulmonary Function Testing that shows either:

(1) FVC < 80% of predicted *with* FEV-1/FVC ≤ 72% (actual value) or, if the individual tested is at least 68 years old at the time of the testing, *with* FEV-1/FVC ≥ 65% (actual value);

or

(2) TLC < 80% of predicted.

c. **Pathological Evidence of Asbestosis**

A statement by a Board-certified Pathologist that more than one representative section of lung tissue otherwise uninvolved with any other process (e.g., cancer or emphysema) demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence of characteristic asbestos bodies, *and* also that there is no other more likely explanation for the presence of the fibrosis.

d. **Bilateral Pleural Thickening**

Chest X-rays demonstrating bilateral pleural thickening which (1) has not been followed within two years by a malignancy; (2) includes blunting of at least one costophrenic angle; and (3) is not explained by any other condition in the subject's history; and *either*

i. If the bilateral pleural thickening is, in the opinion of a Certified B-reader, of ILO Grade B2 or greater, then Pulmonary Function Testing that, in the opinion of a Board-certified Internist or Pulmonary Specialist, shows:

(1) If TLC is available, TLC < 75% of predicted; or

(2) If TLC is not available, a VC or FVC < 75% of predicted with FEV-1/FVC ≥ 75% (actual value); and in either case

(3) a statement by the Board-certified Internist or Pulmonary Specialist that the asbestos-related changes are a substantial contributing factor in causing the pulmonary function changes; *or*

ii. If the bilateral pleural thickening is, in the opinion of a Certified B-reader, of ILO Grade C2 or greater, then Pulmonary Function Testing that, in the opinion of a Board-Certified Internist or Pulmonary Specialist, shows:

(1) FVC < 80% of predicted with FEV-1/FVC ≥ 75% (actual value), or, if the individual tested is at least 68 years old at the time of the testing, with FEV-1/FVC ≥ 65% (actual value); or

(2) TLC < 80% of predicted; (and in either case)

(3) a statement by the Board-certified Internist or Pulmonary Specialist that the asbestos-related changes are a substantial contributing factor in causing the pulmonary function changes.

C. **Disputes**

1. **Disputes Concerning Pathological Diagnoses**

a. **Initial Review**

i. At the beginning of each twelve-month period after this Stipulation is effective, Class Counsel and Counsel for the CCR Defendants, or failing agreement, a mutually selected, neutral third-party, shall select a group of five Board-certified Pathologists that shall decide all disputes concerning pathological issues during that twelve-month period. Each pathologist

serving in this group shall not, within the five-year period prior to the effective date of this Stipulation, have spent more than one-half of his or her professional time, or derived more than one-half of his or her professional income, either annually or in total, either reviewing or testifying in any forum on medical-legal issues related to asbestos. If Class Counsel and Counsel for the CCR Defendants are able to agree on some, but not all five members of this group, the individuals agreed upon by Class Counsel and Counsel for the CCR Defendants shall be members of this group, and the remainder of the group shall be selected by the mutually selected, neutral third-party. If Class Counsel and Counsel for the CCR Defendants are unable to agree on such a neutral third party, Class Counsel and Counsel for the CCR Defendants shall each select a representative, and those two representatives shall together select the neutral third party.

ii. All disputes concerning whether a Claim 1) meets the requirements for a diagnosis of a malignancy, either to satisfy the Mesothelioma, Lung Cancer, or Other Cancer categories; 2) meets the requirements for asbestosis by pathological evidence, either to satisfy the Non-Malignant Conditions, Lung Cancer, or Other Cancer categories; or 3) has a manifestation date sufficient to meet any latency requirements related to these pathological determinations, shall be referred for decision to a single member of the group of five pathologists, who shall be selected in rotating order; provided,

however, that if any pathologist in the group of five pathologists has had any prior involvement with the Claim submitted for resolution, that pathologist shall be disqualified from any further involvement concerning that Claim, and the next pathologist in rotating order shall decide the dispute. Each side shall be allowed to make written submissions to the pathologist designated to decide the dispute. Although the pathologist shall generally decide the disputed issue on the papers submitted, the pathologist shall have the authority, if the pathologist deems it appropriate, to order additional appropriate, reasonable, non-invasive, and non-excessive testing or examination of the Exposed Person, or appropriate and reasonable testing or examination of any existing pathological material (excluding any sort of computed tomography (CT) scan). Assuming that no additional review in sought pursuant to Paragraph (b) of this Part, the pathologist's decision on the issue referred for resolution shall finally determine the issue. The pathologist shall decide the issue referred to him or her as soon as practicable.

iii. If, on the basis of the medical reports or other medical evidence submitted by the Claimant, the Claim satisfies on its face the requirements of a given Compensable Medical Category, the standard to be applied by the pathologist to determine the issue referred to him or her shall be whether the ultimate conclusion from those medical reports or evidence is clearly erroneous.

b. **Additional Review**. Either the Claimant or the CCR shall have the right to seek additional review of the single pathologist's decision under Paragraph (a) of this Part, under the following procedures. First, the party seeking such additional review shall give notice to the other party within thirty (30) days of receipt of the decision of the single pathologist's decision under Paragraph (a). The disputed issue shall then be referred to two other members of the group of five pathologists, who shall be selected by rotation. The two pathologists to whom the dispute is referred shall independently decide the disputed issue, after reviewing the same medical information, records, and submissions, and under the same standard as the single pathologist. The two pathologists conducting the additional review shall decide the issue referred to them as soon as practicable. If the three pathologists who have decided the issue (the initial single pathologist, and the two pathologists conducting additional independent reviews of the issue) disagree, the decision of the majority shall finally determine the issue. If the Claimant seeks additional review and the decision of the initial single pathologist is sustained after this additional review, the Claimant shall pay the costs of such additional review. Otherwise, the CCR shall pay the costs of the additional review.

c. If, at the conclusion of the medical dispute resolution process, it has been determined that the Claim satisfies the applicable requirements of a Compensable Medical Category, and the Claim has otherwise been deemed to qualify for compensation under this Stipulation, the Claim shall be governed by the procedures in Parts VIII-X.

2. **Disputes Concerning Clinical Diagnoses**

a. **Initial Review**

i. At the beginning of each twelve-month period after this Stipulation is effective, Class Counsel and Counsel for the CCR Defendants, or failing agreement, a mutually selected, neutral third-party, shall select a group of five physicians that shall decide all disputes concerning the clinical diagnosis of Non-Malignant Conditions during that twelve-month period. Each

physician shall be a Board-certified Internist or Pulmonary Specialist and a Certified B-reader (or, if not, shall consult with a Certified B-reader when interpreting Chest X-rays in connection with resolution of disputes described below). Further, each physician serving in this group or consulting with a member of this group (whether a Board-certified Internist, Pulmonary Specialist, or a Certified B-reader) shall not, within the five-year period prior to the effective date of this Stipulation, have spent more than one-half of his or her professional time, or derived more than one-half of his or her professional income, either annually or in total, either reviewing or testifying in any forum on medical-legal issues related to asbestos. If Class Counsel and Counsel for the CCR Defendants are able to agree on some, but not all five members of this group, the individuals agreed upon by Class Counsel and Counsel for the CCR Defendants shall be members of this group, and the remainder of the group shall be selected by the mutually selected, neutral third-party. If Class Counsel and Counsel for the CCR Defendants are unable to agree on such a neutral third party, Class Counsel and Counsel for the CCR Defendants shall each select a representative, and those two representatives shall together select the neutral third party.

ii. All disputes concerning whether a Claim 1) meets the requirements for the Non-Malignant Conditions category by clinical evidence; 2) meets, by clinical evidence, the underlying Non-Malignant Conditions

necessary to satisfy the Lung Cancer or Other Cancer categories; or 3) has a manifestation date sufficient to meet any latency requirements related to these clinical determinations, shall be referred for decision to a single member of the group of five physicians, who shall be selected in rotating order; provided, however, that if any physician in the group of five physicians has had any prior involvement with the Claim submitted for resolution, that physician shall be disqualified from any further involvement concerning that Claim, and the next physician in rotating order shall decide the dispute. Each side shall be allowed to make written submissions to the physician designated to decide the dispute. Although the physician shall generally decide the disputed issue on the papers submitted, the physician shall have the authority, if the physician deems it appropriate, to order additional appropriate, reasonable, non-invasive, and non-excessive testing or examination of the Exposed Person (excluding any sort of computed tomography (CT) scan). Assuming that no additional review is sought pursuant to Paragraph (b) of this Part, the physician's decision on the issue referred for resolution shall finally determine the issue. The physician shall decide the issue referred to his or her as soon as practicable.

iii. If, on the basis of the medical reports or other medical evidence submitted by the Claimant, the Claim satisfies on its face the requirements of a given medical category, the standard to be applied by the physician to determine the issue referred to him or her shall be whether the ultimate conclusion from those medical reports or evidence is clearly erroneous.

b. **Additional Review**. Either the Claimant or the CCR shall have the right to seek additional review of the single physician's decision under Paragraph (a) of this Part, under the following procedures. First, the party seeking such additional review shall give notice to the other party within thirty (30) days of receipt of the decision of the single physician's decision under Paragraph (a). The disputed issue shall then be referred to two other members of the group of five physicians, who shall be selected by rotation. The two physicians to whom the dispute is referred shall independently decide the disputed issue, after reviewing the same medical information, records, and submissions, and under the same standard as the single physician. The two physicians conducting the additional review shall decide the issue referred to them as soon as practicable. If the three physicians who have decided the issue (the initial single physician, and the two physicians conducting additional independent reviews of the issue) disagree, the decision of the majority shall finally determine the issue. If the Claimant seeks additional review and the decision of the initial single physician is sustained after this additional review, the Claimant shall pay the costs of such additional review. Otherwise, the CCR shall pay the costs of the additional review.

c. If, at the conclusion of the medical dispute resolution process, it has been determined that the Claim satisfies the applicable requirements of a Compensable Medical Category, and the Claim has otherwise been deemed to qualify for compensation under this Stipulation, the Claim shall be governed by the procedures in Parts VIII-X.

3. **Disputes Concerning Exposure Requirements**. All disputes concerning whether a Claim meets the exposure requirements of any Compensable Medical Category shall be resolved in the manner prescribed in Part IV.B. of this Stipulation.

D. **Exceptional Medical Claims**

1. **Exceptional Medical Panel**. At the beginning of each twelve-month period after this Stipulation is effective, Class Counsel and Counsel for the CCR Defendants, or failing

agreement, a mutually selected, neutral third-party, shall select a panel of five physicians that shall decide all issues concerning Exceptional Medical Claims during that twelve-month period. This Exceptional Medical Panel shall consist of two Board-certified Pulmonary Specialists, one Board-certified Radiologist (who is either a Certified B-reader or a specialist in computed tomography), and two Board-certified Pathologists. If Class Counsel and Counsel for the CCR Defendants are able to agree on some, but not all five panel members, the individuals agreed upon by Class Counsel and Counsel for the CCR Defendants shall be members of the panel, and the remainder of the panel shall be selected by the mutually selected, neutral third-party. The Panel shall function by majority rule. If Class Counsel and Counsel for the CCR Defendants are unable to agree on such a neutral third party, Class Counsel and Counsel for the CCR Defendants shall each select a representative, and these two representatives shall together select the neutral third party.

2. **Application for Treatment as an Exceptional Medical Claim.** As set forth in Part III.G. of this Stipulation, any Claimant whose Claim has been determined to meet the exposure and timeliness criteria of Parts IV and VI of this Stipulation, and whose claim has either been rejected for failure to meet the requirements of any Compensable Medical Category, or who prior to such rejection concedes that the Claim cannot meet these requirements, may apply to the Exceptional Medical Panel for identification of the Claim as an Exceptional Medical Claim. The application must be supported by the report of a Board-certified Internist, Pulmonary Specialist, Pathologist, or Oncologist, as appropriate for the Compensable Medical Category claimed, who has not, within the five-year period prior to the effective date of this Stipulation, spent more than one-half of his or her professional time, or derived more than one-half of his or her professional income, either annually or in total, either reviewing or testifying in any forum on medical-legal issues related to asbestos. The physician's report shall contain a complete review of the Exposed Person's medical history and current condition, such additional material by way of analysis and documentation as shall be prescribed by the Panel in a separate memorandum, and a detailed

explanation why the Claim meets the standard for selection as an Exceptional Medical Claim set forth in Paragraph D.3. of this Part.

3. **Standard for Acceptance**. At six-month intervals, the Panel shall review all applications for identification as Exceptional Medical Claims that were submitted to it during the prior six months. The standard to be applied by the Panel for identification of Exceptional Medical Claims shall be that the Claimant, for reasons beyond his or her control, cannot satisfy the requirements for a given Compensable Medical Category in Paragraph B of this Part, but is able, through comparably reliable evidence, to show that the Exposed Person has an asbestos-related condition that is substantially comparable to that of an Exposed Person who would satisfy the requirements of a given Compensable Medical Category. In applying this standard, the Panel may take into consideration all aspects of the Exposed Person's medical history and condition. In this regard, the Panel shall have the authority, if the Panel deems it appropriate, to order additional appropriate, reasonable, noninvasive, and non-excessive testing or examination of the Exposed Person (including computed tomography (CT) scanning). The Panel shall nevertheless exert every reasonable effort to implement the intent of the requirements of the Compensable Medical Categories, which is to act as a "screen" to ensure inclusion only of Exposed Persons with asbestos-related conditions associated with those requirements. A decision of the Panel shall finally determine the issue. The Panel shall decide each application submitted to it as soon as practicable. Any Claim identified as an Exceptional Medical Claim by this Panel shall be considered to meet the medical criteria of the given Compensable Medical Category under this Stipulation. If the Claim has otherwise been determined to qualify for compensation under this Stipulation, the Claim shall be governed by the procedures in Part VIII-X.

To illustrate, the Panel should recognize that Counsel for the CCR Defendants and Class Counsel intend this Exceptional Medical Claim category to include Exposed Persons who do not, on their face, meet the requirements of Paragraphs B.2. or B.4. of this Part, but who the Panel determines, by clear and convincing evidence, have, for example, (i) an asbestos-related lung cancer that should qualify for compensation under this Stipulation because the

Claimant presents other objective evidence sufficient to warrant the conclusion that exposure to asbestos or asbestos-containing products manufactured or supplied by the CCR Defendant(s) or the Additional Releasee(s) is a substantial contributing cause of the lung cancer; or (2) an asbestos-related non-malignant condition that should qualify for compensation under this Stipulation because the Claimant can demonstrate, through a series of pulmonary function testing over a multi-year period, a consistent trend of decrease of VC, TLC, or FVC (with a preserved FEV-1/FVC ratio) that is substantially greater than expected over the same multi-year period, without any other identifiable cause for such a decrease.

4. **Resubmission**. Any Claimant who applies to have a Claim considered as an Exceptional Medical Claim and whose Claim is rejected by the Panel may resubmit that Claim to the Panel for reconsideration if new evidence becomes available, but a Claim may be resubmitted to the Panel no more frequently than once every two years.

5. **Exceptional Medical Claim Cap**. In each six-month period that this Panel reviews applications for identification as Exceptional Medical Claims, the Panel shall have the authority to select any number of Exceptional Medical Claims in each Compensable Medical Category up to a maximum of the following percentages of the total number of Claims that qualified for payment in each Compensable Medical Category during the prior six-month period; provided, however, that the Panel may identify as Exceptional Medical Claims in each Compensable Medical category in any year no more than the following percentages of the maximum number of Qualifying Claims that may be paid in each Compensable Medical Category during that year (as set forth in Part VIII and Exhibit A to this Stipulation):

Compensable Medical Category	Exceptional Medical Claim Percentage
Mesothelioma	5%
Lung Cancer	20%
Other Cancer	20%
Non-Malignant Conditions	6%

Any claims identified as Exceptional Medical Claims under this procedure shall be counted towards the maximum number of Qualifying Claims that may be paid in the relevant Compensable Medical Category in each year, as set forth in Part VIII and Exhibit A.

E. **Waiver of Medical Qualifications**

Nothing in this Stipulation shall prohibit Class Counsel and Counsel for the CCR Defendants from agreeing to waive the medical qualifications prescribed for any individual physician under this Stipulation.

VI. Timeliness of Claims

A. **Timeliness Requirement**. The CCR shall not reject any Claim submitted for compensation under this Stipulation on the basis of the statute of limitations or repose or any other applicable doctrine concerning staleness of claims, so long as the Claim was not time-barred as of the date that the Class Action Complaint was filed under the standards and burden of proof that would govern under the law that would have applied to a lawsuit by the Claimant for asbestos-related personal injury in an appropriate forum. The CCR may, however, reject any Claim submitted for compensation under this Stipulation that was time-barred as of the date that the Class Action Complaint was filed. Accordingly, with respect to any Claim submitted for compensation under this Stipulation, the CCR Defendant(s) agree to toll all applicable statutes of limitation or repose, or any other applicable doctrine concerning staleness of claims, as of the date that the Class Action Complaint was filed, except as provided in Parts XVI and XXII of this Stipulation.

B. **Disputes**

1. Any dispute as to whether a Claim is time-barred under Paragraph A of this Part shall be referred for decision to a single arbitrator assigned by rotation from the List of Arbitrators developed pursuant to Part XXVI.B. of this Stipulation.

2. The arbitrator shall render a decision as soon as practicable based on written submissions from the parties,, unless live testimony is appropriate. All testimonial evidence submitted to the arbitrator shall be made under oath or by sworn affidavit, or by written declaration subscribed to as true under penalty of perjury. The standard to be applied by the arbitrator shall be whether the Claim was time-barred as of the date that the Class Action Complaint was filed under the standards and burden of proof that would have governed in a lawsuit for asbestos-related injury by the Claimant in an appropriate forum. The arbitrator's decision shall finally determine the issue.

3. If a Claim has been referred to an arbitrator to resolve a dispute over exposure pursuant to Part IV.B. of this Stipulation, that same arbitrator shall also resolve any dispute as to whether the Claim is time-barred.

4. If the arbitrator determines that the Claim is not time-barred, and the Claim has otherwise been deemed to qualify for compensation under this Stipulation, the Claim shall be governed by the procedures in Parts VIII-X of this Stipulation.

VII. Compensation Schedule

A. **General**

The Compensation Schedule attached as Exhibit B to this stipulation establishes for each Compensable Medical Category minimum and maximum negotiated values and a negotiated average value range. These values shall be used for payment of Claims pursuant to Part VIII of this Stipulation. The Compensation Schedule also establishes for each Compensable Medical Category a negotiated average value for payment of Extraordinary Claims in that category, which shall be used to calculate the funds available for the payment of Extraordinary Claims pursuant to Part IX of this Stipulation.

B. **Possible Adjustment of Compensation Schedule**

1. At ten (10) year intervals, Class Counsel and Counsel for the CCR Defendants shall negotiate what adjustments, if any, should appropriately be made to the values established in the Compensation Schedule that have not otherwise been taken into account through the procedures of this Stipulation and the values on the existing Compensation Schedule.

2. Class Counsel and Counsel for the CCR Defendants shall commence negotiations on any adjustments to the Compensation Schedule no later than the beginning of Year 10 of the current ten (10) year period. Such negotiations shall continue throughout the first quarter of Year 10. If Class Counsel and Counsel for the CCR Defendants have not resolved the issue by the conclusion of the first quarter of Year 10, they shall refer the issue for non-binding mediation by a mutually selected, neutral mediator. If the mediator is unable to resolve the issue by the conclusion of the second quarter of Year 10, the issue shall be referred for decision to a mutually selected, neutral arbitrator. (The mutually selected neutral arbitrator may be chosen from the List of Arbitrators, developed pursuant to Part XXVI.B. of this Stipulation, but the arbitrator need not be chosen from the List of Arbitrators.) If Class Counsel and Counsel for the CCR Defendants cannot agree on a neutral arbitrator, each shall select a representative, and the two representatives shall together select a neutral arbitrator. The arbitrator's decision shall finally determine the issue. The arbitrator shall render a decision no later than the conclusion of the third quarter of Year 10.

3. In no event shall any adjustments to the values in the Compensation Schedule pursuant to this Paragraph B exceed the values in the Compensation Schedule for the prior ten (10) year period by more than twenty percent (20%).

VIII. Qualifying Claims Payment Procedures

All Qualifying Claims shall be subject to the following payment procedures.

A. **Case Flow**

1. **General**. Each year after this Stipulation is effective, the CCR shall pay up to but, in any event, no more than the

maximum number of Qualifying Claims in each compensable medical category set forth for that year in Exhibit A to this Stipulation. If the number of Qualifying Claims presented to the CCR in any Compensable Medical Category in a given year exceeds the maximum number that may be paid in that category in that year, then such excess Qualifying Claims shall be the first Qualifying Claims paid in the following year or years; provided, however, that such excess Qualifying Claims shall be counted towards the maximum number of Qualifying Claims that may be paid in the relevant Compensable Medical Category in the following year or years as set forth in Exhibit A.

2. **Possible Adjustment of Case Flow in First 10 Years**. If, after any successive five-year period that this Stipulation is effective, the total number of Qualifying Claims in any Compensable Medical Category for that five years exceeds, on an aggregate basis, by more than ten percent (10%) the maximum number of Qualifying Claims that may be paid in that category for that five years as set forth in Exhibit A, the maximum number of Qualifying Claims to be paid in that medical category for each future year in Exhibit A shall be adjusted upwards by ten percent (10%). The maximum number of Qualifying Claims to be paid in any Compensable Medical Category (as set forth in Exhibit A) may be adjusted upwards by ten percent (10%) no more than one time. An illustration of how this adjustment would work if the successive five year period occurs during the first five years that this Stipulation is effective is shown in Exhibit A*.

3. **Case Flow in Years After Year 10**

a. Exhibit A to this Stipulation sets forth the agreed-upon case flow for each Compensable Medical Category through the initial ten years that this Stipulation is effective. During Year 10 Counsel for the CCR Defendants and Class Counsel shall negotiate the case flow figures for the next period, based on the experience that the parties have had in the prior ten years and any other information that will help them predict a realistic and workable future case flow.

b. Class Counsel and Counsel for the CCR Defendants shall commence negotiations on case flow figures for the next period no later than the beginning of the Year 10 of the current ten

(10) year period. Such negotiations shall continue throughout the first quarter of Year 10. If Class Counsel and Counsel for the CCR Defendants have not resolved the issue by the conclusion of the first quarter of Year 10, they shall refer the issue for non-binding mediation by a mutually selected, neutral mediator. If the mediator is unable to resolve the issue by the conclusion of the second quarter of Year 10, the issue shall be referred for decision to a mutually selected, neutral arbitrator. (The mutually selected neutral arbitrator may be chosen from the List of Arbitrators, developed pursuant to Part XXVI.B. of this Stipulation, but the arbitrator need not be chosen from the List of Arbitrators.) If Class Counsel and Counsel for the CCR Defendants cannot agree on a neutral arbitrator, each shall select a representative, and the two representatives shall together select a neutral arbitrator. The arbitrator's decision shall finally determine the issue. The arbitrator shall render a decision no later than the conclusion of the third quarter of Year 10.

B. **Compensation Payments**

Any Claimant with a Qualifying Claim may elect to resolve the Claim through (a) the simplified payment procedures in this Paragraph B; (b) the individualized payment procedures in this Paragraph B; or (c) the Extraordinary Claim procedures under Part IX of this Stipulation. In making an offer to any Claimant under any of the foregoing procedures, the CCR may also offer the Claimant the option of receiving compensation in the form of periodic payments based upon terms established by the CCR in consultation with Class Counsel.

1. **Simplified Payment Procedures**. If the Claimant elects the "simplified payment procedures," the Qualifying Claim shall be resolved for an amount equal to the negotiated minimum value established for that Claimant's Compensable Medical Category set forth in the Compensation Schedule attached as Exhibit B. As set forth in Part III.C. of this Stipulation, the Claimant may elect such simplified payment procedures at the time that the Claim is first submitted to the CCR. Such an election may also be made at a later date; provided, however, that an election of simplified payment procedures must be made prior to the acceptance by the Claimant of a settlement offer from the CCR under the procedures set forth in Paragraph B.2. of this Part or in

Part IX of this Stipulation. Payment under the simplified payment procedures shall be made, generally in the order in which the Claims are submitted to the CCR, as soon as practicable, and, in any event, no later than thirty (30) days after receipt by the CCR of an appropriate release and any other appropriate settlement documentation; provided, however, that no payment shall be made until the CCR has received an appropriate, executed release and any other appropriate settlement documentation; and provided further that Claims for which simplified payment procedures are elected shall be governed by the case flow provisions established in Paragraph A of this Part and Exhibit A to this Stipulation.

2. **Individualized Payment Procedures**.

a. Any Claimant with a Qualifying Claim who has not elected simplified payment procedures under Paragraph B.1. of this Part, and who does not have a pending application for Extraordinary Claim treatment under Part IX of this Stipulation, shall be deemed to have elected "individualized payment procedures." At six-month intervals, and subject to the case flow provisions established in Paragraph A of this Part and Exhibit A to this Stipulation, the CCR shall evaluate all Qualifying Claims for which individualized payment procedures have been elected. That evaluation shall be based on relevant factors of the traditional tort principles of damages, including but not limited to type of claim, nature and extent of asbestos disease or injury, questions of medical causation, disability, age, number and age of dependents, special damages, pain and suffering, likelihood and amount of exposure to products manufactured or supplied by the CCR Defendants or the Additional Releasee(s), job history, location of the forum in which a lawsuit for asbestos-related injury or damage could properly be maintained by the Claimant, information concerning historical settlement values, jury verdicts, and judgments in comparable cases involving various plaintiffs' counsel in that forum and in other jurisdictions, type of release to be provided by the Claimant, and any other relevant criteria generally utilized in the settlement of litigated tort cases. Where a Claimant's right to recover damages for pain and suffering would be eliminated under the law that would have been applicable to a lawsuit for asbestos-related injury by that Claimant in an appropriate forum because the Exposed Person has died between the time that the Claim is submitted and

the time that the Claim is evaluated for payment by the CCR, as under California Probate Code § 573(c) or any similar statute, the Claim shall be evaluated by the CCR as though the Exposed Person had not died pending evaluation of the Claim.

b. As soon as practicable, and in any event no later than ninety (90) days after the beginning of the evaluation period, the CCR shall make a good-faith offer to each Claimant to resolve such a Qualifying Claim for an amount between the minimum and maximum negotiated values for the applicable Compensable Medical Category set forth in the Compensation Schedule attached as Exhibit B; provided, however, that the average amount offered in settlement to those Claimants with Qualifying Claims who have elected the individualized payment procedures in each Compensable Medical Category in any six-month period shall fall within the negotiated average value range for that Compensable Medical category set forth in the Compensation Schedule attached as Exhibit B. In other words, the total amount of settlement dollars offered to all Claimants with Qualifying Claims who have elected individualized payment procedures in each Compensable Medical Category for any six-month period must equal the amount that would result by multiplying the total number of such Qualifying Claims in that medical category by a number within the negotiated average value range established for that Compensable Medical Category set forth in the Compensation Schedule attached as Exhibit B.

c. If a Claimant accepts the CCR's offer, payment of the settlement amount shall be made, generally in the order in which the Claims are submitted to the CCR, as soon as practicable, and, in any event, no later than thirty (30) days after receipt by the CCR of notice of the Claimant's acceptance; provided, however, that no payment shall be made until the CCR has received an appropriate, executed release and any other appropriate settlement documentation.

3. **Fair Allocation of Resources**. As noted in Paragraphs B.1. and B.2. of this Part, the CCR shall pay Claimants with Qualifying Claims who elect simplified or individualized payment procedures generally in the order in which the Claims are submitted to the CCR (so-called "FIFO order"). In any year, however, where the number of Qualifying Claims presented to the

CCR in a given Compensable Medical Category or categories exceeds the maximum number that may be paid in that category or categories in that year (as set forth in Paragraph A of this Part and Exhibit A to this Stipulation), the CCR shall have authority to alter this principle of payment in FIFO order to ensure that a disproportionate number of the Claimants paid in that Compensable Medical Category or categories are not represented by one attorney or firm.

For example, if, in a given year, the number of Qualifying Claims presented to the CCR in a given Compensable Medical Category exceeds by ten percent (10%) the maximum number that may be paid in that category in that year (as set forth in Paragraph A of this Part and Exhibit A to this Stipulation), then, to the extent feasible, ten percent (10%) of the Qualifying Claims presented by each attorney or firm in that Compensable Medical Category in that year shall not be paid until the next year.

C. **Payment of Additional Qualifying Claims**

When, in any year, the total amount of settlement dollars paid by the CCR for Qualifying Claims in a given Compensable Medical Category is less than an amount equal to the maximum number of Qualifying Claims in that category that may be paid in that year (as set forth in Paragraph A of this Part and Exhibit A to this Stipulation) multiplied by the maximum number in the negotiated average value range for that Compensable Medical Category, the difference between these two amounts shall be used, in any subsequent year or years, to pay additional Qualifying Claims in any Compensable Medical Category where the number of Qualifying Claims presented in that category exceeds the maximum number of Qualifying Claims that may be paid in that category in that year (as set forth in Paragraph A of this Part and Exhibit A to this Stipulation). To the extent that there are additional Qualifying Claims in the Mesothelioma category that could be paid in this manner, those claims shall be given priority in payment over Qualifying Claims in any other Compensable Medical Category.

IX. Extraordinary Claim Procedure

A. **Nomination for Extraordinary Claim Treatment**. Any Claimant with a Qualifying Claim may be considered for Extraordinary Claim treatment. As set forth in Part III.C. of this

Stipulation. the Claimant may nominate the Claim for Extraordinary Claim treatment when the Claim is first submitted to the CCR. Such a nomination may also be made at any later date prior to the acceptance by the Claimant of a settlement offer from the CCR under the procedures set forth in Part VIII of this Stipulation; provided, however, that any Claim nominated for Extraordinary Claim treatment shall not be further processed for payment by the CCR under Part VIII of this Stipulation, unless and until the Claimant notifies the CCR that the Claim is withdrawn from consideration as an Extraordinary Claim.

B. **Joint Nomination for Extraordinary Claim Treatment**. The CCR may join in any nomination of a Claim for Extraordinary Claim treatment. If the CCR joins in the nomination, the CCR shall, as soon as practicable, and, in any event, within thirty (30) days after that joint nomination, pay to the Claimant the amount that the CCR would offer to the Claimant if the Claim were not selected as an Extraordinary Claim, but instead were processed under Part VIII of this Stipulation. If the Claim is ultimately selected as an Extraordinary Claim, this payment shall be counted in the sum of settlement payments for Extraordinary Claims in that year, as provided in Paragraph E.2. of this Part. If the Claim is ultimately not selected as an Extraordinary Claim, this payment shall be counted in the settlement payments in that Compensable Medical Category under Part VIII of this Stipulation for the time period when the Claim is not selected as an Extraordinary Claim. Any payment made under this Paragraph B shall be credited against any amount ultimately to be paid by the CCR to the Claimant. If a Claim is selected as an Extraordinary Claim but the Claimant rejects the settlement offer for the Claim and elects to resolve the claim through binding arbitration or the tort system, as prescribed in Part X of this Stipulation, any payment made under this Paragraph B shall be fully refunded by the Claimant to the CCR, or, at the CCR's option, credited against any arbitration award or judgment against the CCR Defendant(s) that is obtained by the Claimant, pursuant to the procedures in Part X of this Stipulation. No payment to a Claimant under this Paragraph B shall be made until the CCR has received from the Claimant an executed agreement reflecting the conditions of this Paragraph B.

C. **Criteria for Extraordinary Claims**. In general, a Qualifying Claim may be considered for treatment as an Extraordinary Claim when the Claimant meets certain criteria. These criteria shall include a combination of age, number and age of dependents, relevant economic factors, an unusually high percentage of exposure to the asbestos or asbestos-containing products of the CCR Defendant(s) or the Additional Releasee(s), and other similar factors that would demonstrate a truly extraordinary claim for compensatory damages against the CCR Defendant(s) if litigated as a tort case in an appropriate forum.

D. **Extraordinary Claims Panel**. The determination of which, if any, Qualifying Claims meet the criteria defined above for Extraordinary Claim treatment shall be made by an independent three-person panel (the Extraordinary Claims Panel) under the procedures set forth in Paragraph E below. Each year after the effective date of the Stipulation, Class Counsel and Counsel for the CCR Defendants shall each designate one Panel member who in turn shall designate, by agreement, a third member; each Panel member shall have a one-year term. Panel members may, however, be selected to serve additional one-year terms. The Panel shall function by majority rule.

E. **Selection and Payment of Extraordinary Claims**

1. At annual intervals, the Extraordinary Claims Panel shall apply the general guidelines in Paragraph C of this Part to select any Extraordinary Claims from the Qualifying Claims nominated for Extraordinary Claim treatment. In each year, the Extraordinary Claims Panel shall have the authority to select any number of Extraordinary Claims in each Compensable Medical Category up to a maximum number that shall be equal to the following percentages of the total number of Claims that have qualified for payment and may be paid in that Compensable Medical Category to that date (as set forth in Part VIII and Exhibit A to this Stipulation) minus the total number of Extraordinary Claims that have been previously selected by the Extraordinary Claims Panel in that Compensable Medical Category to that date:

Compensable Medical Category	**"Extraordinary" Claim Percentage**
Mesothelioma	3%
Lung Cancer	3%
Other Cancer	3%
Non-Malignant Conditions	1%

All Claims selected as Extraordinary Claims under this procedure shall be counted towards the maximum number of Qualifying Claims that may be paid in the relevant Compensable Medical Category in the year of their selection, as set forth in Part VIII and Exhibit A to this Stipulation.

2. The Extraordinary Claims Panel shall have authority, on behalf of the CCR, to make a settlement offer to any Claimant whose Claim is selected as an Extraordinary Claim in any amount that the Panel deems fit, with due regard for the factors that make such a Claim extraordinary, as outlined in Paragraph C of this Part; provided, however, that the total amount of settlement dollars offered to all Claimants whose Claims have been selected as Extraordinary Claims in all Compensable Medical Categories for each year may not exceed the amount that would result by multiplying the maximum number of Extraordinary Claims in each Compensable Medical Category that may be selected to that date, as set forth in Paragraph E.1. of this Part, by the negotiated average value for Extraordinary Claims for that category set forth in the Compensation Schedule attached as Exhibit B, minus any amounts that have been previously paid to Claimants whose Claims have been selected as Extraordinary Claims.

3. If a Claimant with an Extraordinary Claim accepts the settlement offer from the Extraordinary Claims Panel, payment of the settlement amount shall be made, generally in the order in which the Claims are submitted to the CCR, as soon as practicable, and, in any event, no later than thirty (30) days after receipt by the CCR of notice of the Claimant's acceptance; provided, however, that no payment shall be made until the CCR has received an appropriate, executed release and any other appropriate settlement

documentation. Any payment to a Claimant by the CCR with an Extraordinary Claim pursuant to Paragraphs B or F of this Part shall be credited against the settlement amount due to the Claimant from the CCR.

4. Any Claim nominated for Extraordinary Claim treatment that is not selected as an Extraordinary Claim by the end of the annual period in which the Claim was nominated for Extraordinary Claim treatment may be resubmitted to the Extraordinary Claims Panel in any subsequent year or years, until the Claimant elects to proceed under Parts VIII or X of this Stipulation.

F. **Advance Payment**. In any annual period, the Extraordinary Claims Panel shall have the authority to make full or partial advance payments for Claims that have been nominated but not yet selected for Extraordinary Claim treatment in that period. Such advance payments may be made in situations when the Panel determines that the Claim will, without question, be selected as an Extraordinary Claim at the end of the annual period, and the Claimant presents a case of extreme hardship or exigent circumstances that warrant full or partial advance payment of the Claim. Partial advance payment, rather than full advance payment, shall be preferred. All such advance payments shall be counted in the sum of the settlement payments for Extraordinary Claims in that year, as provided in Paragraph E.2. of this Part. Any advance payment shall be credited against the amount ultimately to be paid by the CCR to the Claimant. If a Claim is selected as an Extraordinary Claim but the Claimant rejects the settlement offer for the Claim and elects to resolve the claim through binding arbitration or the tort system, as prescribed in Part X of this Stipulation, any advance payment made under this Paragraph F shall be fully refunded by the claimant to the CCR, or, at the CCR's option, credited against any arbitration award or judgment against the CCR Defendant(s) that is obtained by the Claimant pursuant to the procedures in Part X of this Stipulation. No payment to a Claimant under this Paragraph F shall be made until the CCR has received from the Claimant an executed agreement reflecting the conditions of this Paragraph F.

X. Alternative Procedures for Determining Compensation Under This Stipulation in the Tort System or Through Binding Arbitration

Any Claimant with a Qualifying Claim who decides not to accept a settlement offer made pursuant to the procedures in Parts VIII or IX of this Stipulation may elect to resolve the Claim either through the tort system or through binding arbitration pursuant to the procedures set forth in this Part. The election shall be made by serving upon the CCR notice of an election of either suit in the tort system or of binding arbitration within ninety (90) days of receipt of a settlement offer from the CCR under Parts VIII.B.2. or IX.E.2. of this Stipulation; provided, however, that if a Claimant receives a settlement offer under both Parts VIII.B.2. and IX.E.2., the ninety (90) days shall run from receipt of the most recent settlement offer. The right of any such Claimant to make an election shall be subject to the following provisions. For purposes of this Part, the "applicable law" shall refer to the state or federal law that is or would be applicable to a lawsuit for asbestos-related injury or damage by the Claimant in an appropriate forum.

A. Case Flow

The maximum number of Claimants with Qualifying Claims in each Compensable Medical Category who, in any one year, may sue in the tort system or resort to binding arbitration against the CCR Defendant(s) shall not exceed one percent (1%) of either the total number of Claims that qualified for payment in each Compensable Medical Category during the previous year or the maximum number of Qualifying Claims that may be paid in each Compensable Medical Category during the previous year (as set forth in Part VIII and Exhibit A to this Stipulation), whichever is lower. Claimants electing to resolve their Claims under this Part shall proceed to the tort system or to binding arbitration in the order in which they make such an election, subject to these case flow requirements. Once the number of Claimants in any Compensable Medical Category who elect to resort to the tort system or to binding arbitration in any one year has reached the case flow maximum for that year as defined above, then any additional Claimants in that Compensable Medical Category making the election in that year shall be given first priority to proceed to the tort system or to binding arbitration in the next year, and shall

be counted in the case flow maximum (as defined above) for that year.

B. **Mandatory Settlement Conference**

Before any Claimant with a Qualifying Claim may proceed to the tort system or to binding arbitration, the Claimant must request the Court to conduct a mandatory settlement conference with respect to the Claim. This mandatory settlement conference may be conducted by the Court, by another judge or other neutral third-party designated by the Court, or, if both the Claimant and the CCR agree, by a mutually selected, neutral third-party. The settlement conference may be conducted by telephone, if either party so requests. If no settlement is reached within thirty (30) days of that mandatory settlement conference, the Claimant and the CCR shall submit to each other on that date a written settlement offer that will remain in effect for an additional thirty (30) days. If neither party accepts the other party's settlement offer during this period, then the Claimant may, upon certification from the Court that the Claimant has completed the settlement conference process, proceed to the tort system or to binding arbitration.

C. **Procedural Rules**

1. Any Claimant who elects to resolve a Claim through the tort system may pursue the Claim in any appropriate forum, subject to the procedures set forth in this Part.

2. Any Claimant who elects binding arbitration shall submit the Claim to a single, neutral arbitrator, whose decision shall bind both the Claimant and the CCR. The arbitrator shall be selected by rotation from the List of Arbitrators, developed pursuant to Part XXVI.B. below. Procedures shall be established to ensure that a final arbitration award shall be rendered within six (6) months of the qualifying Claimant's election to proceed to binding arbitration. Payment of such awards, however, shall be governed by Paragraph D of this Part.

3. From among the CCR Defendant(s), the suit in the tort system may name and the arbitration proceeding may involve claims against, only those CCR Defendant(s) identified by the Claimant in the submission to the CCR pursuant to Part III.B. of this Stipulation as a manufacturer or supplier of asbestos or asbestos-containing products to which the Claimant was exposed.

(This Stipulation does not in any way limit, however, a Claimant's right to name in a lawsuit in the tort system any defendant that is not a CCR Defendant or an Additional Releasee.) With respect to the CCR Defendant(s) named as defendants in the tort suit or arbitration proceeding, the only issues that may be decided in the suit or proceeding shall be (a) whether the Exposed Person has/had an asbestos-related disease or condition; (b) whether the Exposed Person's alleged exposure to any asbestos or asbestos-containing products of the CCR Defendant(s) was a substantial contributing factor in causing the Exposed Person's alleged asbestos-related condition; and (c) the amount of compensatory damages, if any, to be awarded. In addition, in any proceeding where, under the applicable law, the share of compensatory damages allocable to the CCR Defendant(s) is relevant to any issue, the CCR Defendant(s)' share of compensatory damages shall also be determined. No evidence not relevant to these issues shall be offered by the Claimant against the CCR Defendants(s).

4. In no event shall the amount of compensatory damages awarded in any binding arbitration proceeding under this Part be admissible in any later proceeding involving the Claimant and any non-CCR defendant, except to the extent that such a damages award is treated as a prior settlement between the Claimant and the CCR Defendant(s) under applicable law.

5. The CCR Defendant(s) agree that they will not object to the joinder of any tort suit against any CCR Defendant(s) pursuant to this Part with any tort suit against any non-CCR Defendant, provided that this joinder is ordered at least ninety (90) days prior to the beginning of trial; and provided further, that the CCR Defendant(s) shall have sufficient time to participate fully in all appropriate discovery and pretrial procedures. To the extent that the CCR Defendant(s) shall not have sufficient time prior to trial to participate fully in all appropriate discovery and pretrial procedures, Claimant shall agree to move jointly with the CCR Defendant(s) to continue the trial until such date as the CCR Defendant(s) have such sufficient time.

6. In no event shall the Claimant be permitted to seek or recover in the suit in the tort system or in the arbitration proceeding any damages against the CCR Defendant(s) for any punitive, aggravated, or exemplary damages of any sort. Nor may

any Claimant seek or recover damages for the actual percentage risk of contracting cancer. Any other damages available under the applicable law shall remain recoverable. The reason that no damages for increased risk of cancer may be sought or recovered is that, under Part XIV of this Stipulation, any Claimant may present both a Claim for a non-malignant and a malignant condition for processing under this Stipulation, irrespective of applicable law, so that a Claimant will have a new right to present a Claim for a malignant condition despite prior recovery for a non-malignant condition.

D. **Payment of Verdicts or Arbitration Awards**

1. Any Claimant who pursues a Claim through the tort system or through binding arbitration shall be entitled to receive from the CCR the amount of any damages award that may be collected under applicable law from any CCR Defendant(s) named in the tort suit or arbitration proceeding under Paragraph C.3. of this Part. That amount of the damages award shall be paid to the Claimant as follows, after receipt by the CCR of an appropriate, executed release and any other appropriate documentation: First, within thirty (30) days after the damages award is final (including any appeals if the Claim is resolved in the tort system), the Claimant shall receive an amount equal to the lesser of 1) one hundred and fifty percent (150%) of the CCR's last written settlement offer, pursuant to Paragraph B of this Part, or 2) the amount of the damages award referred to in this Paragraph. Second, if the amount of the damages award referred to in this Paragraph is greater than one hundred and fifty percent (150%) of the CCR's last written settlement offer, the Claimant shall receive from the CCR the balance between that damages award and the CCR's initial payment in five equal, annual installment payments, commencing with the first anniversary date of the CCR's initial payment; provided, however, that if an appeal is pursued and a damages award is sustained on appeal, the Claimant shall receive, within thirty (30) days after the damages award is final, an amount of the damages award that is equal to the amount of the award that the Claimant would have received under this Paragraph from the CCR by that date if no appeal had been taken, and the balance between that initial payment by the CCR and the total damages

award on the same schedule that would have been followed under this Paragraph if no appeal had been taken.

2. The CCR's obligation to pay the full amount of any damages award due to a Claimant who elects to resolve a Claim in the tort system or through binding arbitration under this Part shall not diminish or count against any other financial obligation of the CCR Defendants under this Stipulation, except as provided in Parts IX.B. and IX.F. of this Stipulation.

E. **No Election of Remedies**

Any prior recovery in the tort system for the same Claim from a defendant that is not a CCR Defendant or an Additional Releasee shall not affect in any way any Claimant's right of action against the CCR Defendant(s) pursuant to this Part; provided, however, that any damages award recovered or settlement received for that Claim shall be treated as a prior settlement under applicable law, and, accordingly, the CCR Defendant(s) shall be entitled to any set-offs, credits, or other reductions in any verdict or award against the CCR Defendant(s) on account of such prior damages award or settlement as prescribed by the applicable law.

XI. Claims Involving Extreme Financial Hardship or Other Exigent Circumstances

When a Claim presented to the CCR involves extreme financial hardship or other exigent circumstances (such as imminent death), the CCR shall exert every reasonable effort to compress the time frames for processing that Claim set forth in this Stipulation.

XII. Releases

A. **Definitions**. For purposes of this Stipulation, the following terms shall have the meanings set forth below. Terms used in the singular shall be deemed to include the plural, and vice versa.

1. "Deemed Release" shall mean an agreement deemed to be provided by a Settlement Class Member to the CCR Defendant(s) upon approval of the Stipulation of Settlement as a good faith, fair, adequate, and reasonable settlement, pursuant to which a Claim by that Settlement Class Member is settled and released against the CCR Defendant(s) and the Additional Releasee(s). Pursuant to a Deemed Release, such a Claim shall be

conclusively compromised and settled; provided, however, that the giving of a Deemed Release by any Settlement Class Member shall not prevent such Settlement Class Member from bringing suit or otherwise proceeding against the CCR Defendant(s) and the Additional Releasee(s) where permitted under Part XVI or XXII.

2. "Pro Tanto Jurisdiction" shall mean a jurisdiction in which a person or entity that has settled a claim with a plaintiff and that has received a release may not be held liable for contribution, and any judgment against non-settling defendants must be reduced by the amount paid by the released person or entity or by any greater amount or proportion specified in the release. Current examples of such jurisdictions include Alabama, California, Florida, Illinois, Indiana, Massachusetts, Michigan, Missouri, Montana, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, Virginia, West Virginia, Washington, and Wyoming.

3. "Per Capita or Percentage Share Jurisdiction Without Contribution Bar" shall mean a jurisdiction in which a person or entity that has settled a claim with a plaintiff and that has received a release may be held liable for contribution unless the release provides that, upon a determination that the released person or entity is a joint tortfeasor, any verdict against non-settling defendants will be reduced by the share, whether per capita or based upon percentage of fault, of the released person or entity. Absent such a provision in the release, any judgment against non-settling defendants is reduced by the amount paid by the released person or entity or by any greater amount or proportion specified in the release, assuming that the released person or entity is proven to be a joint tortfeasor. A right of contribution exists in favor of any joint tortfeasor that has paid more than its share of the common liability, whether per capita or based upon percentage of fault. Current examples of such jurisdictions include Arkansas, Delaware, Georgia, Hawaii, Maine, Maryland, Minnesota, New Mexico, Pennsylvania, Puerto Rico, Rhode Island, and Wisconsin.

4. "Per Capita or Percentage Share Jurisdiction With Contribution Bar" shall mean a jurisdiction in which a person or entity that has settled a claim with a plaintiff and that has received a release may not be held liable for contribution, and any judgment against non-settling defendants is, or may be, reduced by the

released party's share of the common liability, whether per capita or based upon percentage of fault, or by a percentage fixed by statute, at least where such a reduction is greater than either the amount paid by the released person or entity or any amount specified in the release, or where the non-settling defendants elect such a reduction in lieu of other alternatives. Current examples of such jurisdictions include Connecticut, the District of Columbia, Iowa, Louisiana, Mississippi, Nebraska, New Jersey, New York, Texas, and the Virgin Islands.

5. "No Joint and Several Liability Jurisdiction" shall mean a jurisdiction in which joint and several liability has been abolished, non-settling defendants are not entitled to any reduction in a judgment against them because of a joint tortfeasor's settlement and release, and there is no right of contribution. Current examples of such jurisdictions include Alaska, Arizona, Colorado, Idaho, Kansas, Kentucky, North Dakota, Utah, and Vermont.

B. **Structure for Settlement**. Upon its approval by the Court as a good faith, fair, adequate, reasonable, and ethical settlement, this Stipulation of Settlement shall constitute a "structure for settlement" (see *In re Brooklyn Navy Yard Asbestos Litigation*, 971 F.2d 831, 843 (2d Cir. 1992)), which shall provide the exclusive remedy for all Settlement Class Members for any Claim against the CCR Defendant(s) and the Additional Releasee(s).

C. **Applicable Releases**. Whether a Settlement Class Member has provided a Deemed Release shall depend upon which of the definitions set forth in Paragraphs A.2.-5. of this Part most accurately describes the law of the jurisdiction in which a claim for contribution or indemnity is asserted against the CCR Defendant(s) or the Additional Releasee(s), as further explained in Paragraphs D to F of this Part.

D. **Pro Tanto Jurisdictions or No Joint and Several Liability Jurisdictions**.

1. Those Settlement Class Members whose Claims would be brought in a Pro Tanto Jurisdiction or a No Joint and Several Liability Jurisdiction shall be deemed to provide each of the twenty CCR Defendants with a Deemed Release;

2. If any such Settlement Class Member submits a Qualifying Claim to the CCR, prior to payment of the Qualifying Claim, that Settlement Class Member shall execute and provide to the CCR Defendant(s) an additional release containing all provisions included in the CCR Defendant(s)' customary release for the counsel representing the Settlement Class Member in the applicable jurisdiction. Where no history of such prior negotiated release exists, the CCR Defendant(s) and the Settlement Class Member's counsel shall negotiate in good faith the terms of the release to be executed and provided to the CCR Defendant(s); provided that, if no agreement can be reached, the release that the CCR Defendant(s) demonstrate is their standard release for the applicable jurisdiction shall be utilized.

E. **Per Capita or Percentage Share Jurisdictions Without a Contribution Bar**.

1. Those Settlement Class Members whose Claims would be brought in a Per Capita or Percentage Share Jurisdiction Without a Contribution Bar shall be deemed to provide each of the twenty CCR Defendants with a Deemed Release;

2. If any such Settlement Class Member submits a Qualifying Claim to the CCR, prior to payment of the Qualifying Claim, that Settlement Class Member shall execute and provide to the CCR Defendant(s) an additional release containing all provisions included in the CCR Defendant(s)' customary release for the counsel representing the Settlement Class Member in the applicable jurisdiction. Where no history of such prior negotiated release exists, the CCR Defendant(s) and the Settlement Class Member's counsel shall negotiate the terms of the release to be executed and provided to the CCR Defendant(s); provided that, if no agreement can be reached, the release that the CCR Defendant(s) demonstrate is their standard release for the applicable jurisdiction shall be utilized.

F. **Per Capita or Percentage Share Jurisdictions With a Contribution Bar**. When a Settlement Class Member in a Per Capita or Percentage Share Jurisdiction With a Contribution Bar submits a Qualifying Claim to the CCR, prior to payment of the Qualifying Claim, the Settlement Class Member shall execute and provide to the CCR Defendant(s) a release containing all provisions

included in the CCR Defendant(s)' customary release for the counsel representing the Settlement Class Member in the applicable jurisdiction. Where no history of such prior negotiated release exists, the CCR Defendant(s) and the Settlement Class Member's counsel shall negotiate in good faith the terms of the release to be executed and provided to the CCR Defendant(s); provided that, if no agreement can be reached, the release that the CCR Defendant(s) demonstrate is their standard release for the applicable jurisdiction shall be utilized.

XIII. Contribution and Indemnity Claims Arising in Tort

A. If any Settlement Class Member brings suit arising in tort against a non-CCR defendant or defendants alleging an asbestos-related injury and if such defendants assert claims for contribution or indemnity against any CCR Defendant(s) or Additional Release(s) who have not received deemed or actual releases fully protecting them against claims for contribution or indemnity, that Settlement Class Member shall:

1. move jointly with such CCR Defendant(s) or Additional Releasee(s) for severance and continuance of the trial of such contribution or indemnity claims;

2. refrain from volunteering or agreeing to assist any non-CCR defendant in pursuing its contribution or indemnity claim against such CCR Defendant(s) or Additional Releasee(s); and

3. refrain from entering into any settlement agreement with a non-CCR defendant under which the non-CCR defendant's duty to pay, or the amount of such payment, is dependent in any way on the pursuit and/or outcome of such defendant's contribution or indemnity claim against such CCR Defendant(s) or Additional Releasee(s);

4. if the asbestos-related injury alleged in such suit is a non-malignant condition, indemnify such CCR Defendant(s) or Additional Releasee(s) for the greater of (a) the amount or proportion provided in any release executed by the Settlement Class Member and provided to the CCR Defendant(s) pursuant to Part XII of this Stipulation; or (b) twenty percent (20%) of the amount of any judgment(s) on any such contribution or indemnity claim(s) entered and enforced against such CCR Defendant(s) or Additional Releasee(s) that arise out of that suit; and

5. if the asbestos-related injury alleged in such suit is a malignant condition, indemnify such CCR Defendant(s) or Additional Releasee(s) for the greater of (a) the amount or proportion provided in any release executed by the Settlement Class Member and provided to the CCR Defendant(s) pursuant to Part XII of this Stipulation; or (b) ten percent (10%) of the amount of any judgment(s) on any such contribution or indemnity claim(s) entered and enforced against such CCR Defendant(s) or Additional Releasee(s) that arise out of that suit.

B. The CCR will take all reasonable steps necessary (i) to defend as it deems appropriate any contribution or indemnity claim against any CCR Defendant(s) or Additional Releasee(s): and (ii) to ensure that neither the CCR Defendant(s) nor their counsel shall voluntarily take any steps to assist any non-CCR defendant in pursuing its contribution or indemnity claims against any CCR Defendant(s) or Additional Releasee(s).

C. To the extent that the CCR pays part of any judgment for contribution or indemnity in a suit by a Settlement Class Member, that payment shall be taken into account in determining any settlement amount later offered by the CCR to that Settlement Class Member under this Stipulation.

XIV. Right of Resubmission

A. Any Claimant who submits a Claim determined by the CCR not to meet the requirements for compensation under this Stipulation may resubmit the Claim at any time if the Exposed Person subsequently dies, has new pathological evidence, or receives a diagnosis of a malignant condition. Otherwise, a Claim may be resubmitted only if other evidence (such as exposure or medical evidence) supporting the Claim changes, and, in any event, no more frequently than once every two years.

B. Any Claimant who receives or has received compensation for any Non-malignant condition from the CCR, the CCR Defendants, or the Additional Releasee(s) under this Stipulation or otherwise, including payments pursuant to the procedures in Part X of this Stipulation, may submit a new Claim for compensation if the Exposed Person subsequently develops a malignant condition and has not previously released the right to such a Claim against the CCR Defendants. Any Claimant seeking compensation for the

subsequent development of a malignant condition must meet all the criteria applicable to the Compensable Medical Category for which compensation is sought, and all other requirements for compensation under this Stipulation; provided, however, that the CCR shall not be allowed to contest any criteria or requirements that the Claimant has previously been determined to satisfy in order to receive compensation for the Non-malignant Condition. Each Claimant shall be entitled to compensation from the CCR, the CCR Defendants, or the Additional Releasee(s) for only one Non-malignant Condition and only one subsequently-developed malignant condition. All amounts previously paid to a Claimant under this Stipulation or otherwise by the CCR, the CCR Defendant(s), or the Additional Releasee(s) for a Non-malignant Condition shall be taken into account in determining the settlement amount offered to the Claimant for the malignant condition.

XV. No Prejudice to Workers' Compensation Rights

This Stipulation is not intended to, and shall not affect, add to, or diminish the right of any Settlement Class Member to recover for asbestos-related personal injury pursuant to any workers' compensation or similar statutory provisions for compensation by an employee against an employer, including, but not limited to, the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. § 901 *et seq.*, or the Federal Employers' Liability Act (FELA), 45 U.S.C. § 51 *et seq*. Accordingly, this Stipulation is not intended to, and shall not, affect any otherwise applicable provision of a workers' compensation or similar statutory provision that bars a Settlement Class Member from filing a tort suit against the CCR Defendant(s) or the Additional Releasee(s).

XVI. No Joint and Several Liability

A. Payments to Claimants by the CCR under any provision of this Stipulation (including Part X) shall be funded by the CCR Defendant(s) in accordance with the terms set forth in the CCR Defendants' Sharing Agreement, which is attached to this Stipulation as Exhibit C. Each CCR Defendant shall be liable only for its individual obligation under this Stipulation and that Sharing Agreement, and no CCR Defendant shall be jointly and severally liable with any other CCR Defendant for any payment due under this Stipulation or that Sharing Agreement. Should any CCR

Defendant fail for any reason to meet its financial obligations under this Stipulation and that Sharing Agreement, recourse for that CCR Defendant's obligations hereunder shall be limited to such defendant.

B. In the event that any CCR Defendant shall fail to meet its financial obligations under this Stipulation and the Sharing Agreement, that CCR Defendant shall be obliged to give notice of that default to Settlement Class Members in the manner ordered by the Court. Thereafter, any Settlement Class Member who has not received compensation under this Stipulation shall have the option of either 1) enforcing that CCR Defendant's obligations under this Stipulation; or 2) asserting full rights in the tort system against that CCR Defendant and any Additional Releasee(s) associated with that CCR Defendant. In addition, any Settlement Class Member who has received compensation under this Stipulation for a Non-Malignant Condition only shall have these same options, but only with regard to a Claim by such Settlement Class Member for a malignant condition. In the event that a Settlement Class Member elects to assert full rights in the tort system against a defaulting CCR Defendant and any Additional Releasee(s) associated with that CCR Defendant, that Settlement Class Member shall have one (1) year from the notice of default to bring such an action unless the applicable law provides for a longer period. Upon the notice of default, the tolling of all applicable statutes of limitation or repose, or any other applicable doctrine concerning staleness of claims, as provided in Part VI of this Stipulation, shall cease with respect to a defaulting CCR Defendant and any Additional Releasee(s) associated with that CCR Defendant, and any Settlement Class Member who elects to assert full rights in the tort system pursuant to this Paragraph B.

C. Nothing in this Stipulation shall be deemed to alter any applicable law concerning the joint and several liability of any CCR Defendant(s) and Additional Releasee(s) with any non-CCR defendants for a judgment in the tort system.

XVII. Establishment of Settlement Fund

A. The CCR shall be responsible for collecting from each CCR Defendant, and/or its insurers, as it becomes due, each CCR Defendant's share of indemnity payments and other costs required

to make the compensation payments provided in this Stipulation. Such collections shall be retained by the CCR in a segregated trust or bank account established for the purpose of funding the resolution and satisfaction of the CCR Defendant(s)' obligations under this Stipulation. This fund will be treated as a "qualified settlement fund" within the meaning of Treasury regulations under section 468B of the Internal Revenue Code of 1986, as amended, and the CCR shall be the administrator of such fund.

B. Plaintiff Class Representatives and the CCR Defendant(s) recognize that the obligations of each CCR Defendant under this Stipulation will have to be paid, at least in substantial part, by insurance provided under general liability insurance policies covering each such CCR Defendant. Accordingly, this Stipulation shall not become effective until all of the following conditions precedent have been satisfied: (1) A copy of this Stipulation has been provided to each insurer listed in Exhibit D to this Stipulation (which appear to be those insurers that might reasonably be called upon to pay a CCR Defendant's obligations under this Stipulation at any time during a period of ten (10) years from the effective date of this Stipulation); (2) each such insurer has been provided with written notice of, and an opportunity to participate in a hearing to be set by the Court for the purpose of determining, among other things, the fairness of this Stipulation and the issues described in 3(a) through 3(c) of this Paragraph; (3) each such insurer is a party to a written agreement, final judgment or a final decision pursuant to the procedures set forth in Appendix C to that certain Agreement Concerning Asbestos-Related Claims dated June 19, 1985 ("Wellington Agreement"), establishing that: (a) this Stipulation is a reasonable compromise and settlement of the CCR's Defendant(s)' liabilities and legal obligations to the members of the Class; (b) each CCR Defendant's allocated share, pursuant to the CCR Defendants' Sharing Agreement (attached to this Stipulation as Exhibit C), of all sums paid pursuant to the terms of this Stipulation is reasonable, and each CCR Defendant will be legally obligated and liable to pay its allocated share of all such sums; and (c) agreement to and participation in this Stipulation by each CCR Defendant does not: (i) breach any express or implied term or condition of any insurance policy insuring such CCR Defendant and issued by any of the insurers described in (1) above; or (ii)

otherwise provide any such insurer with a valid coverage defense for any obligations or liabilities incurred by such CCR Defendant under this Stipulation; and (4) each such insurer that is a party to the Wellington Agreement is also a party to a written agreement or final decision entered pursuant to the procedures set forth in Appendix C to the Wellington Agreement establishing that each such insurer will continue to fulfill all of its obligations pursuant to Sections VIII through and including XX of the Wellington Agreement with respect to any obligations or liabilities incurred under this Stipulation by each CCR Defendant insured by such insurer.

XVIII. Costs of Administering Stipulation

The costs of administering the procedures set forth in this Stipulation, including the costs of the dispute resolution procedures in Parts IV.B., V.C., VI.B., the Exceptional Medical Panel (Part V.D.), the Extraordinary Claims Panel (Part IX), and the procedures for binding arbitration in Part X shall be paid by the CCR Defendants, except to the extent provided in Part V.C.1.b. and V.C.2.b. If, however, a Claimant elects to resolve a Claim through the tort system under the procedures set forth in Part X, each party (*i.e.*, the Claimant and any CCR Defendant) shall bear its own costs.

XIX. Class Counsel Attorneys' Fees

Class Counsel shall be entitled to reasonable attorneys' fees. These fees shall be determined and approved by the Court, and paid by the CCR Defendants. This payment shall be in addition to all other payments required of the CCR or the CCR Defendants under this Stipulation, and shall not in any way diminish payments to Claimants under this Stipulation.

XX. Individual Claimant's Attorneys' Fees

Each Claimant who submits a Claim for processing under this Stipulation may be represented by Claimant's Counsel of the Claimant's choice. All fees for Claimant's Counsel shall be paid by the Claimant. Attorneys' fees payable by Claimants in connection with Claims paid under this Stipulation (other than pursuant to the procedures in Part X) shall not exceed twenty-five percent (25%) of the compensation paid to the Claimant; provided, however, that when the Claim has been paid as an Extraordinary

Claim under Part IX of this Stipulation, such attorneys' fees, shall not exceed the sum of 1) twenty-five percent (25%) of the maximum value for non-extraordinary Claims in the relevant Compensable Medical Category as set forth in the attached Compensation Schedule; and 2) twenty percent (20%) of the difference between that maximum value and the compensation paid to the Claimant. These limitations on attorneys' fees shall not apply to Claims paid by the CCR pursuant to the procedures in Part X (resolution of Claims in the tort system or through binding arbitration).

XXI. Withdrawal in the Event of Excessive Opt-Outs

The CCR Defendants shall have the right to withdraw, without obligation, from this Stipulation, if, at the close of the time period for individuals to opt out of the class pursuant to the Court's orders implementing Fed. R. Civ. P. 23(c)(2), there have been an excessive number of individuals who have opted out. Whether the number of individuals who have opted out is excessive shall be determined in the sole discretion of the Board of Directors of the CCR. The CCR Defendants shall give notice to Class Counsel that they are exercising this withdrawal right within forty-five (45) days after the close of the opt-out period.

XXII. Withdrawal Rights After Ten Years

A. Each CCR Defendant shall have the right to withdraw from this Stipulation ten (10) years after its effective date. Notification of the exercise of such withdrawal rights shall be given to Class Counsel at least sixty days prior to the tenth year anniversary of this Stipulation's effective date. Should any CCR Defendant exercise that withdrawal right, the amounts set forth in the Compensation Schedule attached to this Stipulation as Exhibit B shall be reduced by the proportion equivalent to that defendant's fixed percentage share as established in the CCR Defendants' Sharing Agreement (attached to this Stipulation as Exhibit C). Any withdrawing defendant shall have no right to a refund of any amounts already paid to the CCR or accrued under the Sharing Agreement as of the date that the CCR Defendant's withdrawal becomes effective. A withdrawing CCR Defendant shall also remain liable for its share under the Sharing Agreement for all Qualifying Claims on which the CCR or the Extraordinary Claim

Panel has made a settlement offer at any time prior to the date on which that CCR Defendant's withdrawal becomes effective, including all such claims on which compensation is ultimately determined pursuant to the provisions of Section X.

B. In the event that any CCR Defendant shall withdraw from the Stipulation, that CCR Defendant shall be obliged to give notice of that withdrawal to Settlement Class Members in the manner ordered by the Court. Thereafter, any Settlement Class Member who has not received, at any time prior to the date on which that CCR Defendant's withdrawal becomes effective, either compensation under this Stipulation or a settlement offer from the CCR or the Extraordinary Claim Panel, including compensation or settlement offers on any claims for which compensation is ultimately determined pursuant to Part X, shall have full rights in the tort system against that CCR Defendant and any Additional Releasee(s) associated with that CCR Defendant. In addition, any Settlement Class Member who has received, at any time prior to the date on which that CCR Defendant's withdrawal becomes effective, either compensation under this Stipulation or a settlement offer from the CCR or the Extraordinary Claim Panel for a Non-Malignant Condition only, including compensation or settlement offers on any Non-Malignant Claims for which compensation is ultimately determined pursuant to Part X, shall have this same right, but only with regard to a subsequent claim by such Settlement Class Member for a malignant condition. Each Settlement Class Member shall have one (1) year from the notice of withdrawal to bring such an action unless applicable law provides for a longer period. Upon the notice of withdrawal, the tolling of all applicable statutes of limitation or repose, or any other applicable doctrine concerning staleness of claims, as provided in Part VI of this Stipulation, shall cease with respect to a withdrawing CCR Defendant and any Additional Releasee(s) associated with that CCR Defendant.

XXIII. Continuing Obligations of Class Counsel

A. Class Counsel shall have the obligation to audit, on an annual basis, the processing and disposition of Claims submitted by Claimants to the CCR under this Stipulation. In connection with such an audit, Class Counsel shall have the right to examine all

books and records maintained by the CCR related to the processing of Claims under this Stipulation.

B. Class Counsel shall have the right to take any other actions reasonably necessary to ascertain or discharge Class Counsel's legal and ethical obligations in conjunction with their service as Class Counsel.

XXIV. No Delay to Tort System

This Stipulation is not intended to have any effect on any Pending or Prior Lawsuit. The parties intend that such Pending or Prior Lawsuits will continue to be handled in an orderly manner in the existing tort system.

XXV. Interest for Any Delay in Handling Claims

Whenever the CCR shall fail to meet any time requirement for the processing and handling of an individual Claim, interest for the period of each such delay shall be added to any compensation ultimately paid to that Claimant under this Stipulation. The annual rate of such interest shall be equal to the rate paid at the auction of short-term — *i.e.*, 13 week — United States government bills on the last auction date of the month preceding the commencement of the period of delay. This interest rate shall be determined by the money rates chart published in the *Wall Street Journal*.

XXVI. Arbitration

A. **General**. Any dispute arising out of this Stipulation that is not specifically addressed in this Stipulation shall be determined by a single arbitrator upon written submissions from the parties. The parties shall choose that arbitrator from the List of Arbitrators established under Paragraph B of this Part. The arbitrator's decision shall finally determine the issue.

B. The List of Arbitrators from which arbitrators shall be selected to decide disputes under this Part and under Parts IV.B. and VI.B. of this Stipulation shall be mutually agreed upon by Class Counsel and Counsel for the CCR Defendants. If Class Counsel and Counsel for the CCR Defendants are able to agree on some, but not all, arbitrators to be placed on the List, the arbitrators agreed upon by Class Counsel and Counsel for the CCR Defendants shall be placed on the List, and the remainder of the List shall be selected by a mutually selected, neutral third party.

If Class Counsel and Counsel for the CCR Defendants are unable to agree on such a neutral third party, Class Counsel and Counsel for the CCR Defendants shall each select a representative, and those two representatives shall together select the neutral third party.

XXVII. Miscellaneous Provisions

A. **No Effect on Prior Settlements, Releases, or Adjudications**. This Stipulation is not intended to, and shall not, affect the terms of any settlement or release entered into by a Settlement Class Member and the CCR Defendant(s) or Additional Releasee(s) prior to the date that the Class Action Complaint is filed. Similarly, this Stipulation is not intended to and shall not, waive any defense of the CCR Defendant(s) or the Additional Releasee(s) to a Claim based on res judicata or similar doctrines.

B. **No Admission of Liability**. Neither this Stipulation, nor any of its provisions, nor evidence of any negotiations or proceedings related to this Stipulation, nor any proceedings under this Stipulation, shall be offered or received in evidence in this class action or any other action or proceeding as an admission or concession of liability or wrongdoing of any nature on the part of any of the CCR Defendant(s) or anyone acting on their behalf, and the CCR Defendant(s) specifically deny any such liability or wrongdoing.

C. **Best Efforts**. All signatories to this Stipulation and their counsel shall exercise their best efforts to take all steps and expend all efforts which may become necessary to effectuate this Stipulation.

D. **Entire Agreement**. This Stipulation, including the attached Compensation Schedule and Exhibits A-D, is the entire agreement between the Plaintiff Class Representatives, Class Counsel, the CCR Defendant(s), and Counsel for the CCR Defendants concerning the disposition of Claims covered by the Stipulation. All antecedent or contemporaneous extrinsic representations, warranties, or collateral provisions concerning the negotiation and preparation of this Stipulation and attached Exhibits A-D, are intended to be discharged and nullified. In any dispute involving the Stipulation and attached Exhibits A-D, no signatory to this Stipulation shall introduce evidence of or seek to

compel testimony concerning any oral or written communication with respect to the negotiation or preparation of these documents.

E. **Modification**. No modification of this Stipulation may be made except by written agreement of Class Counsel, each of the CCR Defendant(s), and Counsel for the CCR Defendants.

F. **Notices**. All submissions or notices required under this Stipulation may be sent by first-class mail or by hand delivery to the recipient designated in this Stipulation. The timeliness of all submissions and notices shall be measured by the date of postmark (if sent by first-class mail), or by the date of receipt (if hand-delivered).

G. **Operational Date**. This Stipulation shall have perpetual existence, and the CCR shall begin operating under its terms (including making appropriate payments) at the close of the time period for individuals to opt out of the class pursuant to the Court's orders implementing Fed. R. Civ. P. 23(c)(2). Any obligations under this Stipulation shall cease, however, if any of the following occurs:

1. The CCR Defendant(s) exercise their right to withdraw from this Stipulation in the event of excessive opt-outs, as set forth in Part XXI of this Stipulation; or

2. The Court declines to enter an order approving the Stipulation as in good faith and fair, adequate, reasonable, and ethical, and concluding that the Class of Claimants has received adequate notice and has been adequately and ethically represented by Class Counsel;

3. The conditions precedent in Part XVII.B. are not satisfied; and

4. The Court's judgment approving the Stipulation is overturned on appeal to the United States Court of Appeals for the Third Circuit, or the United States Supreme Court.

H. **Execution by Counterparts**. This Stipulation may be executed in any number of counterparts and by different signatories to this Stipulation in separate counterparts, each of which when so executed shall be deemed an original and all of which taken together shall constitute one and the same Stipulation.

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Counsel for the CCR Defendants

Authorized Signature

Amchem Products, Inc.

A.P. Green Industries, Inc.

Armstrong World Industries, Inc.

CertainTeed Corp.

C.E. Thurston and Sons, Incorporated

Dana Corp.

Ferodo America, Inc.

Flexitallic, Inc.

GAF Corp.

I.U. North America, Inc.

Maremont Corp.

National Gypsum Company*

National Service Industries, Inc.

Nosroc Corp.

Pfizer, Inc.

Quigley Co. Inc.

Shook & Fletcher Insulation Co.

T&N plc

Union Carbide Chemicals and Plastics Company, Inc.

United States Gypsum Co.

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* National Gypsum Company's participation in the Stipulation of Settlement is subject to the approval of the Bankruptcy Court.

EXHIBIT A

CENTER FOR CLAIMS RESOLUTION
CASE FLOW MAXIMUMS

Year	Mesothelioma	Lung Cancer	Other Cancer	Non-Malignant Conditions
1	700	700	200	13,500
2	700	630	200	12,000
3	650	600	175	10,500
4	650	530	175	9,000
5	600	500	150	8,500
6	545	455	145	7,500
7	500	400	100	6,500
8	500	400	100	6,000
9	455	300	100	5,455
10	455	300	100	5,000
Total (Years 1-10):	5,755	4,815	1,445	83,955

EXHIBIT A*

CENTER FOR CLAIMS RESOLUTION
CASE FLOW MAXIMUMS(1)

Year	Mesothelioma	Lung Cancer	Other Cancer	Non-Malignant Conditions
1	700	700	200	13,500
2	700	630	200	12,000
3	650	600	175	10,500
4	650	530	175	9,000
5	600	500	150	8,500
6	600	500	160	8,250
7	550	440	110	7,150
8	550	440	110	6,600
9	500	330	110	6,000
10	500	330	110	5,500
Total (Years 1-10):	6,000	5,000	1,500	87,000

NOTE: (1) This schedule assumes that the yearly settlement caps will be increased by 10% starting in 1998.

EXHIBIT B

COMPENSATION SCHEDULE

Qualifying Claims

Compensable Medical Category	Minimum Value	Negotiated Average Value Range	Maximum Value
Mesothelioma	20,000	37,000 - 60,000	200,000
Lung Cancer	10,000	19,000 - 30,000	86,000
Other Cancer	5,000	9,500 - 12,500	32,000
Non-Malignant	2,500	5,800 - 7,500	30,000

Extraordinary Claims

Compensable Medical Category	Negotiated Average Value
Mesothelioma (3%)	300,000
Lung Cancer (3%)	125,000
Other Cancer (3%)	50,000
Non-Malignant (1%) Conditions	50,000

EXHIBIT C

CCR DEFENDANTS' SHARING AGREEMENT

CONCERNING THAT

STIPULATION OF SETTLEMENT BETWEEN THE CLASS OF CLAIMANTS AND DEFENDANTS REPRESENTED BY THE CENTER FOR CLAIMS RESOLUTION

(AN AMENDMENT TO THE PRODUCER AGREEMENT CONCERNING CENTER FOR CLAIMS RESOLUTION)

JANUARY 15, 1993

CCR DEFENDANTS' SHARING AGREEMENT CONCERNING THAT STIPULATION OF SETTLEMENT BETWEEN THE CLASS OF CLAIMANTS AND DEFENDANTS REPRESENTED BY THE CENTER FOR CLAIMS RESOLUTION (AN AMENDMENT TO THE PRODUCER AGREEMENT CONCERNING CENTER FOR CLAIMS RESOLUTION)

This Agreement (hereinafter, the "CCR Defendants' Sharing Agreement"), to amend the Producer Agreement Concerning Center for Claims Resolution with respect to that Stipulation of Settlement Between the Class of Claimants and Defendants Represented by the Center For Claims Resolution and to provide for each Participating Producer's allocated shares of all amounts to be paid or incurred pursuant to the terms of that Stipulation, is made between and among each of the following Participating Producers: Amchem Products, Inc.; A.P. Green Industries, Inc.; Armstrong World Industries, Inc.; CertainTeed Corp.; C.E. Thurston and Sons, Incorporated; Dana Corp.; Ferodo America, Inc.; Flexitallic, Inc.; GAF Corp.; I.U. North America, Inc.; Maremont Corp.; National Gypsum Company; National Service Industries, Inc.; Nosroc Corp.; Pfizer, Inc.; Quigley Co. Inc.; Shook & Fletcher Insulation Co.; T&N, plc; Union Carbide Chemicals and Plastics Company Inc.; and United States Gypsum Co. (hereinafter, collectively, "Participating Producers" or "CCR Defendants").

WHEREAS, Participating Producers are members of the Center for Claims Resolution (hereinafter, the "Center") and signatories to the Producer Agreement Concerning Center for Claims Resolution, as amended, (hereinafter, the "Producer Agreement"), which established the Center to provide for the administration, defense, payment, and disposition of asbestos-related claims filed or asserted against any Participating Producers;

WHEREAS, Participating Producers are the named defendants in the Class Action Complaint filed by the Class of Claimants in the United States District Court for the Eastern District of Pennsylvania;

WHEREAS, Participating Producers, on the advice of counsel, have determined that settlement with the Class of Claimants on the terms and conditions set forth in the Stipulation of Settlement

Between the Class of Claimants and Defendants Represented by Center for Claims Resolution (hereinafter, the "Class Action Stipulation"), to which this CCR Defendants' Sharing Agreement is attached, is a good faith, fair, and reasonable compromise and settlement of Participating Producers' liabilities and legal obligations to members of the Class, and thus in the best interests of Participating Producers;

WHEREAS, Participating Producers have determined that allocation of all amounts to be paid pursuant to the terms and conditions of that Class Action Stipulation, or incurred in connection with that Class Action Stipulation or any claims subject to settlement thereunder, on the basis set forth in this CCR Defendants' Sharing Agreement, is fair and reasonable;

WHEREAS, Participating Producers desire to amend the Producer Agreement, as necessary, in order to enter into the Class Action Stipulation and this CCR Defendants' Sharing Agreement to provide for the allocation of all amounts to be paid or incurred by Participating Producers pursuant to the terms of that Class Action Stipulation;

NOW, THEREFORE, pursuant to Section XIII.3 of the Producer Agreement, and in consideration of the mutual covenants contained herein and intending to be legally bound hereby, Participating Producers hereby amend the Producer Agreement as follows:

1. **The Class Action Stipulation**. Each Participating Producer shall enter into the Class Action Stipulation and this CCR Defendants' Sharing Agreement; shall comply with the terms and conditions of that Class Action Stipulation and this CCR Defendants' Sharing Agreement; and shall cooperate with and assist the Center in the furtherance of such terms and conditions and of their purposes.

2. **Allocated Shares for Compensation Payments**. Each Participating Producer shall be responsible for a fixed percentage share of (1) each compensation payment to be paid to any Claimant pursuant to the terms and conditions of the Class Action Settlement (including without limitation any payment of verdicts or arbitration awards pursuant to the terms and conditions of Part X of the Class Action Stipulation); and (2) any Liability Payments made with

respect to any Asbestos-Related Claim by any party who is not a Settlement Class Member that is based on, arises out of, or related to any claim for asbestos-related personal injury or damage by any Settlement Class Member. Each Participating Producer's fixed percentage share of each such compensation payment or any such Liability Payment shall be the percentage share set forth in letters dated January 11, 1993 to each such Participating Producer from the law firm of Shea & Gardner (the Special Counsel established pursuant to paragraph B.3 of Attachment A to the Producer Agreement); provided, however, that in the event that a Participating Producer shall withdraw from the Class Action Stipulation ten (10) years after its effective date, and the amounts set forth in the Compensation Schedule attached to the Class Action Stipulation are reduced by that withdrawing defendant's percentage share under this CCR Defendants' Sharing Agreement pursuant to Part XXII of the Class Action Stipulation, then the corresponding percentage shares of the non-withdrawing Participating Producers shall be increased proportionally by that withdrawing defendant's percentage share. To the extent that a Participating Producer's percentage shares of such compensation payments are not paid in a timely manner by one or more of its insurers, such Participating Producer shall pay in a timely manner the percentages of the compensation payments in question.

3. **Allocated Expenses**. All allocated expenses incurred by the Center in connection with the Class Action Settlement or any claims subject to settlement thereunder shall be apportioned among the Participating Producers based on the individual Allocated Expense Shares established as provided in Attachment A to the Producer Agreement and as modified by any share adjustments approved or adopted thereunder; provided, however, that in the event a Participating Producer shall withdraw from membership in the Center pursuant to Section IV of the Producer Agreement or have its membership terminated pursuant to Paragraphs 2-3 of Section III of the Producer Agreement, or in the event a Participating Producer shall withdraw from the Class Action Stipulation ten (10) years after its effective date pursuant to Part XXII of the Class Action Stipulation, then the Special Counsel established pursuant to paragraph B.3 of Attachment A to the Producer Agreement shall promptly adjust the Participating

Producers' Allocated Expenses Shares to reflect that event. Any Participating Producer that believes that application of any such adjustment is inequitable as applied to its particular situation, or that the calculation of its Allocated Expense Shares pursuant to any such adjustment has been performed inaccurately or incorrectly, may cause the matter to be presented to the Participating Producers pursuant to paragraph B.2 of Attachment A to the Producer Agreement, and, failing receipt of satisfactory action, may take the matter to alternative dispute resolution within the Center pursuant to paragraph E of Attachment A to the Producer Agreement. Such Participating Producer shall bear the burden of proof. To the extent that a Participating Producer's percentage shares of such allocated expense are not paid in a timely manner by one or more of its insurers, such Participating Producer shall pay in a timely manner the percentages of the allocated expenses in question.

4. **Unallocated Expenses**. Any unallocated expenses incurred by the Center in connection with the Class Action Settlement or any claims settled thereunder (and not otherwise paid by Supporting Insurers) shall be apportioned among the Participating Producers based on the Individual Unallocated Expense Shares established as provided in Attachment A to the Producer Agreement and as modified by any share adjustments approved or adopted thereunder; provided, however, that in the event a Participating Producer shall withdraw from membership in the Center pursuant to Section IV of the Producer Agreement or have its membership terminated pursuant to Paragraphs 2-3 of Section III of the Producer Agreement, or in the event a Participating Producer shall withdraw from the Class Action Stipulation ten (10) years after its effective date pursuant to Part XXII of the Class Action Stipulation, the Special Counsel established pursuant to paragraph B.3 of Attachment A to the Producer Agreement shall promptly adjust the Participating Producers' Unallocated Expense Shares to reflect that event. Any Participating Producer that believes that application of any such adjustment is inequitable as applied to its particular situation, or that the calculation of its Unallocated Expense Shares pursuant to any such adjustment has been performed inaccurately or incorrectly, may cause the matter to be presented to the Participating Producers pursuant to paragraph B.2 of Attachment A

to the Producer Agreement, and, failing receipt of satisfactory action, may take the matter to alternative dispute resolution within the Center pursuant to paragraph E of Attachment A to the Producer Agreement. Such Participating Producer shall bear the burden of proof. To the extent that a Participating Producer's percentage shares of such unallocated expense are not paid in a timely manner by one or more of its insurers, such Participating Producer shall pay in a timely manner the percentages of the unallocated expenses in question.

5. **Asbestos-Related Claims Not Subject to the Class Action Settlement**. Except as provided herein, the Center shall continue to administer and arrange for the evaluation, settlement, payment, or defense of all asbestos-related claims not subject to the Class Action Settlement, and each Participating Producer shall continue to have all of the rights and duties of a member with respect to such asbestos-related claims, in accordance with the provisions of the Producer Agreement and Attachment A thereto.

6. **Execution by Counterparts**. This Amendment may be executed in any number of counterparts and by different Participating Producers hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same amendment.

Authorized Signature

Amchem Products, Inc.

A.P. Green Industries, Inc.

Armstrong World Industries, Inc.

CertainTeed Corp.

C.E. Thurston and Sons, Incorporated

Dana Corp.

Ferodo America, Inc.

Flexitallic, Inc.

GAF Corp.

I.U. North America, Inc.

Maremont Corp.

National Gypsum Company*

National Service Industries, Inc.

Nosroc Corp.

Pfizer, Inc.

Quigley Co. Inc.

Shook & Fletcher Insulation Co.

T&N plc

Union Carbide Chemicals and Plastics Company Inc.

United States Gypsum Co.

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* National Gypsum Company's participation in the Class Action Settlement is subject to the approval of the Bankruptcy Court.

EXHIBIT D

The insurers set forth below are hereby identified pursuant to the Stipulation of Settlement, Part XVII (Paragraph B).

ADMIRAL INSURANCE CO.
AETNA CASUALTY & SURETY CO.
AETNA INSURANCE CO.
AFFILIATED FM INSURANCE CO.
AIU INSURANCE CO.
ALLIANZ INSURANCE CO.
ALLIANZ UNDERWRITERS INC.
ALLIANZ UNDERWRITERS INSURANCE CO.
AMERICAN BANKERS INS. CO. OF FLORIDA
AMERICAN CENTENNIAL INSURANCE CO.
AMERICAN EXCESS INSURANCE CO.
AMERICAN HOME ASSURANCE CO.
AMERICAN INSURANCE CO.
AMERICAN MOTORISTS INSURANCE CO.
AMERICAN REINSURANCE CO.
APPALACHIAN INSURANCE COMPANY OF PROVIDENCE
ARGONAUT INSURANCE CO.
ASSOCIATED INDEMNITY CORP.
ATLANTA INTERNATIONAL INSURANCE CO.
BELLEFONTE INSURANCE CO.
BIRMINGHAM FIRE INSURANCE CO.
BIRMINGHAM FIRE INSURANCE COMPANY OF PENNSYLVANIA
BRITAMCO LIMITED
BRITISH NORTHWESTERN INSURANCE CO.
CAISSE INDUSTRIELLE D'ASSURANCE MUTUELLE
CALIFORNIA UNION INSURANCE CO.
CENTENNIAL INSURANCE CO.
CENTRAL NATIONAL INSURANCE CO. OF OMAHA
CHICAGO INSURANCE CO.
CITY INSURANCE CO.
COLUMBIA CASUALTY CO.
COMMERCIAL UNION ASSURANCE CO. LTD.
COMPAGNIE EUROPEENNE DE REASSURANCE
CONSTITUTION STATE INSURANCE CO.
CONTINENTAL CASUALTY CO.

CONTINENTAL INSURANCE CO.
DRAKE INSURANCE COMPANY OF NEW YORK
E.C.R.A.
EAGLE STAR INSURANCE CO. LTD.
EMPLOYERS
EMPLOYERS COMMERCIAL UNION INSURANCE CO.
EMPLOYERS COMMERCIAL UNION INSURANCE CO. OF AMERICA
EMPLOYERS INSURANCE OF WAUSAU
EMPLOYERS MUTUAL CASUALTY CO.
EMPLOYERS MUTUAL LIABILITY INSURANCE CO. OF WISCONSIN
EMPLOYERS REINSURANCE
EMPLOYERS' LIABILITY ASSURANCE CORP. LTD.
EMPLOYERS' SURPLUS LINES INSURANCE CO.
EVANSTON INSURANCE CO.
EXCESS INSURANCE COMPANY LTD.
FALCON INSURANCE COMPANY
FEDERAL INSURANCE CO.
FIDELITY & CASUALTY CO. OF NEW YORK
FIREMAN'S FUND INSURANCE CO.
FIREMAN'S FUND INSURANCE CO. OF ILLINOIS
FIRST STATE INSURANCE CO.
FIRST STATE OF BOSTON
FIRST STATE UNDERWRITERS AGENCY OF NEW ENGLAND REINSURANCE CORP.
GENERAL ACCIDENT & LIFE ASSURANCE CORP. LTD.
GENERAL REINSURANCE CORP.
GERLING GLOBAL REINSURANCE CO.
GIBRALTAR CASUALTY CO.
GLOBE INDEMNITY CO.
GOVERNMENT EMPLOYEES INSURANCE COMPANY
GRANITE STATE INSURANCE CO.
GREAT AMERICAN INSURANCE CO.
GUARDIAN ROYAL EXCHANGE ASSURANCE LTD.
HARBOR INSURANCE CO.
HARTFORD
HARTFORD ACCIDENT & INDEMNITY CO.
HIGHLANDS INSURANCE CO.
HOME INDEMNITY CO.

HOME INSURANCE CO.
HOUSTON GENERAL INSURANCE CO.
HUDSON INSURANCE CO.
INA
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA
INSCO LIMITED
INSURANCE COMPANY OF NORTH AMERICA
INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA
INTERNATIONAL INSURANCE CO.
INTERNATIONAL SURPLUS LINES INSURANCE CO.
INTERSTATE FIRE & CASUALTY CO.
JEFFERSON INSURANCE COMPANY OF NEW YORK
KEMPER
LA PRESERVATRICE FONCIERE TIARD
LANDMARK INSURANCE CO.
LE SECOURS
LEXINGTON INSURANCE CO.
LIBERTY MUTUAL INSURANCE CO.
LILLOISE D'ASSURANCES ET DE REASSURANCES
LLOYD'S SYNDICATES AND LONDON COMPANIES
LONDON (INSCO LIMITED)
LONDON GUARANTEE & ACCIDENT CO. OF NEW YORK
LUMBERMENS MUTUAL CASUALTY COMPANY
MARYLAND CASUALTY CO.
MEAD REINSURANCE CORP.
MICHIGAN MUTUAL INSURANCE CO.
NATIONAL FIRE
NATIONAL SURETY CORP.
NATIONAL UNION FIRE INSURANCE COMPANY
OF PITTSBURGH, PA
NEW AMSTERDAM CASUALTY CO.
NORTH RIVER INSURANCE COMPANY
NORTH STAR REINSURANCE CORP.
NORTHBROOK EXCESS & SURPLUS INSURANCE CO.
NORTHBROOK INDEMNITY CO.
NORTHBROOK INSURANCE CO.
NORTHWESTERN NATIONAL INSURANCE CO.
NUTMEG INSURANCE CO.
OCEAN CASUALTY INSURANCE CO.

OLD REPUBLIC INSURANCE CO.
PACIFIC EMPLOYERS INSURANCE CO.
PENNSYLVANIA MANUFACTURERS' ASSOCIATION
INSURANCE CO.
PHOENIX ASSURANCE
PROTECTIVE NATIONAL INSURANCE CO. OF OMAHA
PRUDENTIAL ASSURANCE COMPANY LTD.
PRUDENTIAL REINSURANCE CO.
PURITAN INSURANCE CO.
RANGER INSURANCE CO.
RELIANCE INSURANCE CO.
REPUBLIC INSURANCE CO.
ROYAL GLOBE INSURANCE COMPANY
ROYAL INDEMNITY CO.
ROYAL INSURANCE COMPANY LTD.
SAFECO INSURANCE COMPANY OF AMERICA
SAFETY MUTUAL CASUALTY CORP.
ST. PAUL FIRE AND MARINE INSURANCE CO.
ST. PAUL GUARDIAN INSURANCE CO.
STANDARD ACCIDENT INSURANCE CO.
STONEWALL INSURANCE CO.
STONEWALL SURPLUS LINES INSURANCE CO.
SUN ALLIANCE & LONDON INSURANCE
THE STUYVESANT INSURANCE CO.
TOKIO MARINE AND FIRE INSURANCE CO., LTD.
TRANSPORT INDEMNITY CO.
TRAVELERS
TRAVELERS INDEMNITY CO.
TRAVELERS INSURANCE CO.
TWIN CITY FIRE INSURANCE CO.
U.S. FIRE INSURANCE CO.
UNIGARD MUTUAL INSURANCE CO.
UNION DES ASSURANCES DE PARIS
UNITED STATES FIDELITY & GUARANTY CO.
YOSEMITE INSURANCE CO.
ZURICH
ZURICH AMERICAN INSURANCE COMPANY OF ILLINOIS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

RESPONSE OF CCR DEFENDANTS TO THE ORDER TO SHOW CAUSE

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Attorneys for Defendants
Represented by the Center For Claims Resolution

March 17, 1993

* * * *

For the same reasons outlined above, permissive intervention under Rule 24(b) by non-party former asbestos suppliers is also inappropriate. As explained, non-party manufacturers do not have any basis upon which to challenge the settlement. Permitting them to intervene would cause undue delay and would be inconsistent with the policy, as stated by the Third Circuit "of encouraging settlement of complex litigation that otherwise could linger for years." *In re School Asbestos Litig.*, 921 F.2d at 1333. Accord *Arizona* v. *Motorola, Inc.*, 139 F.R.D. 141, 147 (D. Ariz. 1991) (permissive intervention of non-settlor should be denied where it would frustrate statutory policy of "encouragement of early settlement").[11]

C. The Settlement is Fair, Adequate and Reasonable.

We now turn to the fairness, adequacy, and reasonableness of the settlement, as directed by the March 1 Order. In considering these issues, two points should be kept in mind. First, the nine factors relating to the fairness determination identified in the March 1 Order are those traditionally applied in proceedings seeking approval of a proposed class settlement. The cases in which these factors originated, however, were brought as class actions for purposes of litigation, and actually were litigated for some period of time before settlement occurred and approval of the settlement was sought. See, *e.g.*, *Girsh* v. *Jepson*, 521 F.2d at 157; *City of Detroit* v. *Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). As observed above, however, this class action was brought for purposes of settlement only, and has been conditionally certified only for such purposes. Hence, the nine factors typically considered in determining whether to approve a class settlement as fair, adequate, and reasonable, while not irrelevant in an action of this kind, require some adaptation before they can be appropriately applied to a settlement reached before a class action was commenced.

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[11] The CCR Defendants, however, would have no objection if any non-settling asbestos products supplier would like to participate at the fairness hearing as an *amicus curiae*.

Second, as also explained above, a final decision as to whether the settlement should be approved as fair, adequate, and reasonable will not be made at the hearing an March 22. Rather, the purpose of that hearing is simply to determine whether the proposed settlement is "within the range of possible approval," *Manual for Complex Litigation Second* § 30.44, at 241; and hence whether notice should be issued to the class and a formal fairness hearing scheduled. Accordingly, we will address each of the considerations identified in the March 1 Order under this preliminary standard. A full evidentiary showing of the fairness, adequacy, and reasonableness of the proposed settlement will be made by the Representative Plaintiffs and the CCR Defendants, after notice is issued, at the formal fairness hearing.

1. General Considerations

As this Court is aware, the asbestos personal injury litigation has been in full swing since at least the mid to late 1970s. The litigation has been enormously complex, the volume of cases has been staggering, and the transaction costs associated with the litigation have been extremely high. Thus, as the MDL

* * * *

e. Limitations on Claimants' Right To Sue.

Under any settlement, the plaintiff surrenders his or her right to bring suit against the defendant in exchange for the advantages obtained by settling. So here, under the settlement, each class member agrees to resolve his claim against the CCR Defendants in exchange for the performance of a set of promises made by the CCR Defendants in that settlement.

Unlike other settlements, however, this settlement goes significantly further, and provides that claimants — who have qualifying claims and who are not satisfied with the offers made to them under the procedures in the settlement — will have a limited right to have their compensation determined in binding arbitration or the tort system. See Stipulation, Part X, at pp. 67-73.[18] It is

[18] The percentage of qualifying claims per year that may elect to have the amount of their compensation determined in binding arbitration or the tort system is limited to one percent (1%); however, claimants in excess of this number who make this election shall have priority to have their compensation amounts determined in this manner during the next year. Stipulation, Part X.A., at pp. 67-68. This limitation is consistent with the CCR Defendants' experience that more than ninety-nine percent (in fact 99.8%) of the cases against them settle.

true that, in such proceeding or lawsuit, the issues that may be contested by both sides would be limited and payment of the judgment would be made in accordance with the terms of the settlement. *Id.*, at p. 70. Such modified rights are, if anything, more generous than the absolute waiver of the right to bring suit that is required under most settlements.[19]

* * * *

[19] Moreover, the limitation on issues in the binding arbitration or court proceedings under the settlement represents a fairly common "issues trade" in the asbestos litigation, whereby the plaintiffs waive their right to seek punitive damages in exchange for a waiver by the defendants of certain conduct or

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

MEMORANDUM OF CLASS REPRESENTATIVES IN RESPONSE TO RULE TO SHOW CAUSE

By Rule to Show Cause dated March 1, 1993, this Honorable Court has requested the parties to submit, by way of memoranda, their positions regarding certain preliminary matters to be considered by the court, prior to a preliminary hearing on March 22, 1993. The plaintiffs, as class representatives, submit the following on the issues specified by the court.

I. BACKGROUND OF THE LITIGATION

This action was filed on January 15, 1993, seeking approval of the stipulation of settlement and certification of a settlement class for persons who have future claims for asbestos-related personal injury against one or more of the defendants represented by the CCR. The CCR Defendants answered plaintiffs' complaint and joined in plaintiffs' request that the settlement be approved.

The underlying basis for this action is an agreement entered into by the CCR Defendants, by which they have agreed to estab-

* * * *

[Tr. 10] their rights are not affected or impaired by the stipulation of settlement in any way. See *In re School Asbestos Litigation*, 921 F.2d 1330, 1333 (3d Cir. 1990).

III. FAIRNESS, ADEQUACY, AND REASONABLENESS OF THE SETTLEMENT

The plaintiffs incorporate by reference the discussion of these issues set forth by the CCR Defendants in their response to the Rule to Show Cause. In addition, plaintiffs submit the following description of the method by which the settlement procedures will

operate, to assist the court in making its preliminary review of this issue.

A. Description of the Settlement

1. General Description

In general, the Settlement provides for compensation to be paid to class members who have or may in the future contract an asbestos-related medical condition and who had occupationally-related exposure to asbestos or asbestos-containing products manufactured or supplied by one or more of the 20 Defendants. All claims for compensation will be processed by the Center For Claims Resolution (CCR), a non-stock, not-for-profit corporation that has been designated to handle such claims.

2. The Basic Requirements for Compensation

To qualify for compensation, class members (or their attorneys) will have to submit (i) evidence that the class member (or the occupationally exposed person upon whom the class member's claim is based) had sufficient occupational exposure to asbestos or asbestos-containing products manufactured or supplied

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

OBJECTION OF CCR DEFENDANTS TO DISCOVERY REQUESTS NOTICED BY SHELVA WEISE ET AL. AND MOTION FOR PROTECTIVE ORDER

On April 7, 1993, objectors Shelva Weise et al. filed five Notices of Deposition and two Requests for Production of Documents. Pursuant to Rule 26 of the Fed. R. Civ. P., the defendant members of the Center For Claims Resolution ("CCR") believe this discovery is improper and unauthorized at this time. The grounds for this objection and motion are set forth more fully below.

1. Shelva Weise et al. have sought to notice the depositions of four named class representatives and one designated class counsel. In addition, these objectors have served on the defendants and one named plaintiff Requests for Production of Documents. These discovery requests are inappropriate at this time, as the objectors themselves recognized on March 26, 1993 when they filed their "Motion for Leave to Conduct Discovery on Intervenor Plaintiffs' Jurisdictional and Pre-Trial Motions."[1] In that Motion, the objectors argued that *leave* should be granted to conduct this discovery with respect to certain "threshold issues concerning recusal, jurisdiction, and the propriety of certification of this class action." Br. in Support of Mot. at 1 (emphasis added). The Court, however, has not granted such leave and, consequently, no discovery should proceed.

2. Moreover, on April 15, 1993, the Court rendered a Memorandum Opinion and Order denying these objectors intervenor status. In that Order, the Court explicitly dismissed the

[1] A copy of this Motion is attached hereto as Exhibit A.

threshold motions filed by the objectors "without prejudice to their being reasserted as objections to the class settlement."[2] Since the motions which provided the predicate for discovery have been dismissed, and no new objections have been filed, there is no basis for the proposed discovery at this time.

3. Finally, the CCR defendants believe that, at the appropriate time, certain discovery by the objectors, as it relates to the fairness of the settlement, should be allowed to proceed.[3] This Court has ordered, however, that, given the confidential nature of the discovery objectors may request, all discovery should be supervised by Special Master Burbank. See Order dated January 29, 1993, attached hereto as Exhibit D. Accordingly, until the Special Master has had an opportunity to review the discovery requests and CCR's substantive objections to those requests, no discovery should be had.

Thus, for all these reasons, the CCR defendants object to the discovery served by objectors and seek a Protective Order precluding any discovery from going forward unless or until leave for this to proceed has been granted.

Respectfully submitted,

/s/ JOHN D. ALDOCK
Wendy S. White

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(202) 828-2000

[2] A copy of this Order is attached as Exhibit B.

[3] The CCR Defendants set forth their position on the timing of discovery in this action in their "Memorandum in Opposition to Objectors' Requests for Leave to Conduct Discovery on Threshold Issues" (filed March 30, 1993), attached hereto as Exhibit C.

Of Counsel:

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Attorneys for Defendants
Represented by the Center for
Claims Resolution

DATED: April 26, 1993

* * * *

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

CCR DEFENDANTS' MEMORANDUM IN OPPOSITION TO OBJECTORS' REQUESTS FOR LEAVE TO CONDUCT DISCOVERY ON THRESHOLD ISSUES

Objectors seek leave to engage in discovery at this time in connection with the threshold issues pending before the Court. While the CCR defendants may have a more limited view as to what discovery should be allowed in connection with the fairness hearing, we agree that certain discovery will be appropriate before that hearing. The fairness hearing, and the discovery preceding it that will be supervised by the Special Master, will address the fairness of the proposed settlement and issues going to final class certification, including adequacy of class counsel.

We show in this memorandum, however, that no discovery should be permitted until after (1) the Court has resolved certain

threshold legal issues and (2) notice is approved for dissemination to the class members. The CCR defendants have moved for a schedule to resolve, prior to dissemination of the notice, certain jurisdictional and other preliminary legal questions. Those questions include only the key threshold issues that raise pure questions of law and that can be decided without delay for discovery. By contrast, there is no need or reason to hold up approval and dissemination of the notice for discovery concerning the fairness of the settlement and final class certification. Indeed, it would be inappropriate for the Court to decide the nature and scope of permissible discovery before dissemination of the notice has begun and other absent class members have an opportunity to register objections.

We thus show that to the extent that objectors' "motions" address the key threshold issues to be resolved before dissemination of the notice, no discovery is warranted because the issues turn on undisputed facts and raise pure questions of law. We also show that the remaining issues raised by the objectors' "motions" should be handled after approval and dissemination of the notice, and that discovery on those issues should be supervised by the Court and the Special Master at that time.[1]

I. DISCOVERY IS NOT NECESSARY OR APPROPRIATE FOR THE OBJECTION TO CERTIFICATION OF THE CLASS UNDER THE STANDARDS OF RULE 23

The objectors' "Motion to Decertify" argues that this case cannot meet the various requirements of Rules 23(a) and 23(b) when viewed as a litigation class. While the CCR defendants do not disagree with that position, it misses the fundamental point: this case involves the certification of a class *for settlement purposes*

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[1] When the Baron & Budd objectors filed their six "motions" on March 17, only the recusal motion suggested any need for discovery. It was not until the CCR defendants moved for a prompt schedule to resolve the threshold legal issues that objectors reversed course and claimed to need discovery on all of their objections. The circumstances thus suggest that the discovery motion seeks to delay, rather than advance, the proceedings.

only.[2] Courts and commentators have agreed that the Rule 23 criteria are applied differently, and are more easily satisfied, in the settlement context than in a litigation action.[3] Hence all of objectors' arguments as to why this action cannot be certified as a litigation class are inapplicable, and discovery relating to those contentions is equally beside the point.

Discovery is also inappropriate now because the final decision as to certification of the class is a matter to be addressed in connection with the fairness hearing, not now. When, as here, a class is conditionally certified for purposes of settlement only, the "actual class ruling is deferred" until the final fairness hearing, at which time the Court decides both whether the settlement should be approved and whether the class should be finally

* * * *

[2] It is well-settled that "[t]here is no impediment to determining a class action for the purpos[illegible] settlement only." *Girsh* v. *Jepson*, 521 F.2d 153, 155 n.3 (3d Cir. 1975); accord *Greenfield* v. *Villager Indus., Inc.*, 483 F.2d 824, 826 (3d Cir. 1973); *Philadelphia Hous. Auth.* v. *American Radiator & Standard Sanitary Corp.*, 323 F. Supp. 364, 366 (E.D. Pa. 1970); Manual for Complex Litigation Second § 30.45, at 242-44 (1985); 2 H. Newberg & A. Conte, Newberg on Class Actions § 11.27 (3d ed. 1992).

[3] See, *e.g.*, 2 H. Newberg & A. Conte, *Newberg on Class Actions* § 11.28, at 11-57 to -58 (3d ed. 1992); *Manual for Complex Litigation Second* § 30.45, at 243; *In re A.H. Robins Co.*, 85 B.R. 373, 378 (E.D. Va. 1988), *aff'd*, 880 F.2d 709 (4th Cir. 1989); *In re First Commodity Corp.*, 119 F.R.D. 301, 308 (D. Mass 1987).

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

OBJECTION OF PLAINTIFF CLASS REPRESENTATIVES TO DISCOVERY REQUESTS NOTICED BY SHELVA WEISE, ET AL. AND MOTION FOR PROTECTIVE ORDER

Objectors Shelva Weise, et al. on April 7, 1993 filed five Notices of Deposition and two Requests for Production of Documents. Pursuant to Rule 26 of the Federal Rules of Civil Procedure, the plaintiff class representatives hereby object to this discovery on the grounds that said discovery is improper and unauthorized at this time.

Plaintiff class representatives hereby join in the objection of the CCR Defendants to said Discovery Requests and adopt by reference the Objection and Motion filed by Counsel for the CCR Defendants on April 26, 1993.

Respectfully submitted,

DATED: April 28, 1993

/s/ RONALD L. MOTLEY

/s/ JOSEPH F. RICE

/s/ GENE LOCKS
Counsel for the Class

Ronald L. Motley, Esquire
Joseph F. Rice, Esquire
Ness, Motley, Loadholt,
Richardson & Poole
151 Meeting Street, Suite 600
Charleston, SC 29404

* * * *

presence of asbestos-induced injury by plaintiffs' lawyers, businesses, school districts, and public utilities. I have examined literally thousands of persons to determine whether or not they had sustained an asbestos-related physical injury. I have also treated persons who had sustained asbestos-related injuries. I have testified in dozens of trials and depositions, in both state and federal courts, on the issue of whether a given plaintiff has sustained an asbestos-related injury and if so, the extent of the medical expense that he or she will likely incur in the future as a result of the asbestos-related injury. I am thoroughly familiar with the cost of detection and treatment of asbestos disease both locally and nationally.

4. A person who has been occupationally exposed to asbestos is at risk for the development of the non-malignant diseases of asbestosis and pleural thickening, as well as asbestos-related malignancies such as lung cancer, mesothelioma, and various intestinal cancers. A person who was occupationally exposed to asbestos in the past but who has not yet manifested any asbestos-related disease and suffers no physical symptoms attributable to asbestos disease should nonetheless be monitored to enable the early detection of asbestos-related disease, particularly malignancies. Such a person should have, at most, an annual evaluation conducted by a qualified physician, which would include a medical history, chest x-rays, screening pulmonary function testing, and physical examination. In most instances, after a negative initial evaluation and with the absence of symptoms attributable to asbestos exposure, annual chest x-rays are sufficient to detect early changes associated with asbestos exposure.

5. Based on my experience and investigation, the cost of a medical evaluation to detect the presence of asbestos-related disease, including history, physical, chest x-rays, and screening pulmonary function testing should not exceed $500 in any part of the United States.

/s/ THOMAS LEE KURT

[Jurat Omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

DECLARATION OF ROBERT FIORE

I, Robert Fiore, state as follows:

1. I am 48 years old and a citizen of the State of New Jersey. I am executing this affidavit on behalf of myself and the Skill Trades Association, Inc. ("STA"), an association of trade unionists representing all the skilled trades workers at the Newark Housing Authority ("NHA"). These workers include plumbers, carpenters, welders, painters, and masons.

2. I have been employed as an electrician by NHA for 29 years. During that time, I have been exposed to asbestos in pump and tank rooms and in boiler rooms. I have been exposed to asbestos through work on elevator systems (particularly, brake shoes) and through work on electrical wires insulated with asbestos. I have also worked in areas where asbestos was disturbed by other workers. The other skilled trades at NHA have been exposed to asbestos in much the same function.

3. Although exposed to asbestos for a large portion of my work career, and therefore a member of the proposed class in the above-styled case, I have no known manifestation of asbestos-related disease, such as pleural plaques, other pulmonary impairment, or more serious disease such as mesothelioma or lung cancer.

4. To my knowledge, none of my NHA co-workers have suffered or are currently suffering from asbestos-related disease, despite their long-term occupational exposure to asbestos. I realize, however, that they may contract an asbestos-related disease in the future.

5. STA, along with the National Asbestos Victims Legal Action Organizing Committee (NAVLAOC), has a long history advocating our views concerning asbestos in the workplace. At NHA, as in many other workplaces, there was extreme laxity in the use of asbestos. After STA recognized the dangers of working around asbestos, we began pushing for significant changes in working conditions and to promote abatement. In particular, we discovered that $5-$6 million that had been earmarked in the late 1980's by the federal government for asbestos abatement at NHA, had been used improperly for other purposes. We exposed this in 1989, and since that time moneys have been reallocated and abatement has gone forward.

5. STA opposes certification of this class action because it is unfair to asbestos victims who wish to have access to the tort system, and because if unfairly grants no compensation to certain asbestos victims who have some asbestos-related impairment, but have not manifested particular diseases. We are taking this stand on behalf of other workers who are unaware of this action or its full implications, but who will suffer if the proposed settlement is approved.

6. As I said above, I am 48 years old and have been exposed to asbestos for nearly 30 years. Thirty years ago there was extreme carelessness, and even callousness, concerning the continuing exposure of myself and my co-workers to this highly dangerous toxin. I have come to live with the possibility that I may fall ill some day, and it doesn't worry me. I have not yet undertaken any medical monitoring, nor do I suffer emotional distress or fear that someday asbestos disease will strike me down. In addition, co-workers of mine who have strived to improve asbestos education and promote responsible abatement practices feel much the same way. We want to make the best of a difficult situation, but are not emotionally debilitated.

7. As a member of the National Asbestos Victims Legal Action Organizing Committee, STA fully supports NAVLAOC's efforts to stop the proposed *Carlough* settlement from being approved and will participate in the above-styled case to that end.

Signed under the penalties of perjury pursuant to 28 U.S.C. §1746. Executed on 26 July 1993.

/s/ ROBERT FIORE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

DECLARATION OF MYLES O'MALLEY

I, Myles O'Malley state as follows:

1. I am 50 years old and a citizen of the State of New York. From 1972 to 1984, I was a member of the United Brotherhood of Carpenters, first in New Orleans, La., and finally in Brooklyn, NY. During those years I also worked intermittently for non-union construction companies performing small-scale commercial and residential renovation and demolition.

2. In Louisiana, I worked on large-scale projects such as the building of the Dome Stadium and the refurbishment of oil processing vessels at the Tenneco Oil Refinery in Chalmette, La. In the New York area I have worked on projects, union and non-union, which have exposed me to a variety of materials whose likelihood of containing asbestos was great. For instance, I have cut with a circular saw cement board, commonly referred to as "transite." I have worked on fire doors exposing their internal core. I have enclosed spray fire proofing material with sheetrock and I have installed a variety of ceiling tiles. I have worked on projects where the wall and ceiling dust was so thick in the air that visibility was impaired. I have worked on a window replacement project where asbestos blankets were used to catch broken glass. These blankets would become so frayed that the workers would leave the job at the end of the day with small round balls of asbestos cloth clinging to their clothing. In short, I have been occupationally exposed to asbestos and am a member of the proposed class in the above-styled class action.

3. I currently suffer a deficit on my Pulmonary Function Test indicating chronic obstructive lung disease. I regularly experience shortness of breath and tightness in my chest. Since I

do not smoke, I attribute these conditions to my exposure to asbestos.

4. Through my work with various groups (explained below), I have been an advocate for the rights of asbestos victims, and I teach classes on responsible asbestos abatement. Although I am resolute in my work on behalf of asbestos victims and in my desire to expand public appreciation of the hazards of asbestos, I do not fear the day when I may become seriously ill with an asbestos-related disease. That may or may not occur, but in the meantime I, like many of my colleagues in the asbestos victims' movement, am not suffering emotionally but direct my energies both intellectually and emotionally toward keeping others from getting exposed to asbestos.

5. I have been the executive director of The White Lung Association of New Jersey ("WLANJ") since its founding in 1982. WLANJ is located at 390 Broad Street, Newark, New Jersey, 07104. WLANJ is a nonprofit charitable organization whose purposes are to advocate for the rights and protection of asbestos victims and to prevent the further incidence of asbestos-related diseases among asbestos abatement workers.

6. WLANJ is in regular contact, through its newsletter and educational programs, with 15,000 asbestos victims and others who have been occupationally exposed to asbestos. Many of the individuals whom we serve have developed various asbestos related diseases such as lung cancer and mesothelioma, the former disease resulting in death 95% of the time; the latter resulting in death invariably. In addition, many individuals with whom we work have developed scarred lung tissue which impairs the quality of their lives. Many other members have been exposed to asbestos, but have not been diagnosed with asbestos-related diseases. This is frequently the case because significant scarring of the lung can occur without It being detected on x-ray. In some cases, occupational exposure to asbestos can result in lung cancer without

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DECLARATION OF KATHERINE KINSELLA

1. My name is Katherine Kinsella. I am a Senior Vice President and Senior Consultant to The Kamber Group, the largest independently-owned communications company in Washington, D.C. In February 1993, The Kamber Group and I were retained by Class Counsel and counsel for the twenty member companies of the Center For Claims Resolution ("CCR") to design a plan for notifying class members in the settlement class action, *Carlough* v. *Amchem Products, Inc.*, C.A. No. 93-CV-0215 (E.D. Pa.).

2. The Kamber Group was founded thirteen years ago by Victor Kamber, who had been special assistant to the president of the Building and Industrial Trades Department of the AFL-CIO. The Kamber Group handles a variety of communication tasks for a multitude of labor unions, along with many other clients.

3. I have over twenty years of experience in the field of communications and, in my almost eleven years with The Kamber Group, have held creative and management oversight responsibility for a variety of clients — ranging from political candidates and national associations to commercial enterprises. For example, at The Kamber Group, I directed a $2.3 million annual national advertising campaign for three years for the National Education Association, a direct response print advertising campaign for the Consumer's United Insurance Company, and a radio advertising campaign for PEPCO, the Washington, D.C. area public electric utility.

4. In 1986, I developed a national notification campaign for asbestos claimants in the Johns-Manville bankruptcy reorganization. That notification campaign included press, direct mail, and a $1.7 million advertising campaign, including both T.V. and print advertisements. One purpose of the notification was to inform individuals with current or potential personal injury asbestos-related claims against Johns-Manville of the impact of Johns-Manville's reorganization on their rights, and to give them a voice in the reorganization proceedings. In approving the notification plan, the District Court in the Manville reorganization referred to it as "an extensive campaign designed to provide the maximum amount of publicity * * * that was reasonable to expect of man and media." *Johns-Manville Corp.*, 68 B.R. 618, 626 (Bankr. S.D.N.Y. 1986),

aff'd, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane* v. *Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988).

5. I understand that the class in *Carlough* includes all persons who were exposed occupationally, or through the occupational exposure of a spouse or household member, to asbestos or asbestos-containing products for which one or more of the 20 CCR member companies may bear legal liability, and who had not filed a personal injury lawsuit based on that exposure as of January 15, 1993. The occupational exposure must have occurred in the United States or its territories, or while working aboard U.S. military, merchant, or passenger ships, and the occupationally exposed persons must have resided in the U.S. or its territories as of January 15, 1993. Legal representatives and family members of such occupationally exposed persons who had not, as of January 15, 1993, filed a lawsuit based on that exposure, are also included in the class.

6. I also understand that "occupational exposure" to asbestos generally means that an individual's job responsibility involved working with or around asbestos or asbestos-containing products. Such exposures usually occurred in industrial settings. "Occupational exposure" to asbestos does not include "environmental exposure," such as that potentially experienced by office workers in buildings where asbestos products were present.

7. In order to help me design a notification plan, CCR counsel provided me with certain information: First, concerning the over 200,000 asbestos personal injury claims that have been brought against one or more CCR defendants from the early 1970s (when the first asbestos-related personal injury claims were filed) through the spring of 1993, CCR counsel provided me: 1) a list of state jurisdictions (city or county) or federal judicial districts where the CCR's data shows that more than 100 claims have been filed against one or more CCR defendants, and the number of claims filed in those jurisdictions; 2) a list of jobsites, jobsite locations (to the extent available), and the number of claims at each jobsite, where the CCR data shows that more than 100 claims alleging asbestos exposure at that jobsite have been filed against one or more CCR defendants; 3) a list of the names and addresses of approximately 1,000 attorneys, which is the most complete list that the CCR has of attorneys who have represented plaintiffs who have

filed claims against one or more CCR defendants; and 4) a list of over 1,000 state and federal courts that have handled (either at trial or on appeal) claims filed against one or more CCR defendants. Second, CCR counsel gave me a list of the types of asbestos or asbestos-containing products for which one or more of the 20 CCR defendants may bear legal liability, and the occupations where exposure to these products potentially occurred. Finally, CCR counsel gave me a list of over 9,000 plaintiffs, sorted by plaintiffs' counsel, whose suits against one or more CCR defendants were filed and reported to the CCR from January 15, 1993 through July 31, 1994. The CCR will update this list periodically until two weeks prior to the close of the notification period. I used all of this information, along with the knowledge I gained through my experience in the Manville notification campaign and the resources of The Kamber Group, to design a notification plan for the class in *Carlough*.

8. The notice plan that I designed has several aspects: 1) individual notice, by first class mail, to any potential class member whose name and address can be ascertained through reasonable effort, including any individual who identifies himself or herself as a potential class member, either by calling a special 800 number or by calling or writing to Class Counsel — phone numbers and addresses that will be widely disseminated to potential class members through a variety of notification efforts; 2) notice, through a notification package including various notification materials, to the over 1,000 counsel on the CCR's list who have represented plaintiffs in claims against one or more CCR defendants; 3) notice, through a notification package including various notification materials, targeted to numerous unions and labor bodies at the national, state, and local levels, that may have current or retired members who may be members of the *Carlough* class; 4) notice, through a notification package including various notification materials, targeted to numerous trade or other organizations that may have members in the class, or that may have members that may be able to assist in the notification effort; 5) notice, through a notification package including various notification materials, targeted to numerous trade, industrial or legal publications whose readers may include class members or counsel that routinely represent plaintiffs in the personal injury

litigation; 6) an extensive paid media strategy, using both two rounds of print advertising in newspapers in numerous media markets and in *Parade* magazine, and one round of television advertising; and 7) a strategy designed to encourage public service announcements concerning the class action and proposed settlement in *Carlough* in newspapers, television, radio, and wire services in numerous media markets throughout the United States. In addition, notification packets containing various notification materials will be sent to the over 1,000 state and federal courts that have handled (at trial or on appeal) asbestos personal injury claims against one or more CCR defendants.

9. As noted above, one of the key objectives of all the parts of this notification campaign that supplement the individual mail notice is to encourage potential class members whose names and addresses cannot be ascertained through reasonable efforts to call an 800 number or to contact Class Counsel, so that a complete individual notice packet may be sent by first class mail to those potential class members.

10. Before explaining each aspect of this notification campaign, I will first describe the various notice materials to be used in this campaign.

NOTIFICATION MATERIALS

11. The primary notification document is a full Notice, which is 27-page document that is attached to this Declaration as Exhibit A. This full Notice is a combination notice under Federal Rule of Civil Procedure 23(c) and (e), which means that it gives class members notice of both the class action and the proposed settlement. Pursuant to Rule 23(c), this document notifies class members of the class action, explains the procedures for opting out of the class and the consequences of remaining in the class, and informs each class member who does not opt out of his or her right to enter an appearance in the class action through counsel. The Notice includes an Exclusion Request form that class members who wish to opt out must complete and return to the Court. Pursuant to Rule 23(e), the Notice also summarizes the terms of the proposed settlement — both briefly in the body of the Notice and in greater detail in a 14-page Appendix, informs class members how to obtain a full copy of the settlement agreement, and explains

how class members may review additional materials relevant to the class action and proposed settlement.

12. Attached to this Declaration as Exhibit B is a document entitled "Questions and Answers on the Class Action Lawsuit and Proposed Settlement." This document is essentially an explanation of the main points of the full Notice in a question and answer format. It takes important chunks of information concerning the class action and settlement, and breaks them down into smaller units that can be more easily understood. My own experience and the experience of The Kamber Group is that the question and answer format is an extremely effective method of communicating complex material.

13. Attached to this Declaration as Exhibit C is the layout of an advertisement that is designed to run in various newspapers (primarily the Sunday editions), and in *Parade*. The advertisement will be one-half page in most newspapers, and one full page in tabloid-style newspapers and in *Parade*.[1] The ad gives basic information about the class action, the proposed settlement, the procedures for opting out and the consequences of remaining in the class, and the right to enter an appearance through counsel. The ad has an attention-grabbing headline, directed in bold letters to "ALL PERSONS WHO HAVE WORKED WITH OR AROUND ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS, THEIR SPOUSES, HOUSEHOLD AND FAMILY MEMBERS AND LEGAL REPRESENTATIVES"; in addition, a list of asbestos-containing products, and occupations where exposure to these products potentially occurred, is included in the ad. The ad urges any potential class members with questions to call the special 800 telephone number or to contact Class Counsel to obtain a complete individual notice packet.

14. Attached to this Declaration as Exhibit D is the text of a 30-second television advertisement. This ad is designed to catch the attention of potential class members, to alert potential class members to the class action and settlement, to encourage them to

[1] Due to the size of a page in *Parade*, the headline of the advertisement will be slightly smaller than shown in Exhibit C. The text of the ad in Parade, however, will be identical to Exhibit C.

look in their newspapers for the advertisement described in Paragraph 13 above, and to stimulate them to call the special 800 telephone number to receive a complete individual notice packet. The ad will be both oral and visual, with a rolling text on the screen, which will increase its notification potential. The 800 number will be repeated twice during the ad.

15. Attached to this Declaration as Exhibit E are camera-ready materials (an article and a short advertisement) concerning the class action and settlement. These are materials that unions and other organizations are likely to include in their journals or other publications for their members. These camera-ready materials are designed to be used in publications, such as those distributed by many unions and labor bodies, that will not accept paid advertising and that thus will not run the one-half page advertisement (Exhibit C) in their publications. Similar materials were distributed to unions and other organizations in the Johns-Manville notification campaign.

16. Attached to this Declaration as Exhibit F are lists of the CCR defendants, and of asbestos and asbestos-containing products and occupations reproduced from the full Notice. These lists will be included in the notification materials sent to unions and similar trade or professional organizations.

17. Attached to this Declaration as Exhibit G is a press release and newscast script for distribution to numerous media outlets. Like the other notification materials, these documents give basic information concerning the class action and settlement. These materials are designed to be distributed to newspapers, television, radio, and wire services in numerous media markets across the United States.

18. Attached to this Declaration as Exhibit H is the script to be followed by the 800 telephone operator when answering calls placed to the special 800 number that all the notification materials urge potential class members to telephone to obtain a complete individual notice packet. The script ensures that erroneous information concerning the class action and settlement will not be disseminated by the 800 operators. Pre-stuffed individual notice packets will be labeled so that the correct materials (the individual

notice packets or the Stipulation of Settlement itself) are mailed to potential class members who call the 800 number.

19. Finally, attached to this Declaration as Exhibits I through N are cover letters to be sent, along with the various notification materials, to potential class members, plaintiffs' attorneys, unions and labor bodies, trade and other organizations, trade, industrial, or legal publications, media outlets, and state and federal courts.

INDIVIDUAL NOTICE

20. The first task in designing the notification plan for the *Carlough* class was to determine for which potential class members names and addresses could be ascertained through reasonable effort. As noted in Paragraph 7 above, CCR counsel gave me a list of over 9,000 plaintiffs (sorted by plaintiffs' counsel) whose suits for asbestos-related personal injuries against one or more CCR defendants were filed and reported to the CCR from January 15, 1993 through July 31, 1993. With respect to the names and addresses of other potential class members, CCR counsel and Class Counsel informed me of the following: 1) the vast majority of exposure to asbestos or asbestos-containing products manufactured or supplied by one or more of the CCR defendants (or for which a CCR defendant may otherwise bear legal liability) occurred at jobsites, such as shipyards or construction sites, that were operated by third parties; 2) the majority of these exposures occurred years ago; and 3) a large number of the workers exposed to asbestos at these jobsites were union members. Using all this information, the notification plan calls for the following efforts to give individual notice to potential class members.

21. Under the notification plan, complete individual notice packets, including the full Notice (Exhibit A), the Questions and Answers (Exhibit B), and an appropriate cover letter (Exhibit I), will be sent, by first class mail, to counsel for all plaintiffs (or to the plaintiffs directly, if unrepresented by counsel) who have filed lawsuits against one or more CCR defendants from January 15, 1993 through July 31, 1993. This list will be continually updated throughout the proposed ninety-day notification period, with complete individual notice packets sent to new entrants on the list up until two weeks prior to the close of the notification period.

22. Using the lists from CCR counsel of the types of asbestos or asbestos-containing products and occupations where exposure to these products potentially occurred, my experience in the Johns-Manville notification campaign, the knowledge of The Kamber Group concerning labor organizations, reference books describing various unions, and phone calls to certain national union headquarters, I drew up a list of 56 national or international unions that may have current or retired members in the *Carlough* class.[2] This list of 56 unions, including their current membership figures, is attached to this Declaration as Exhibit O. The total current membership of these 56 unions is approximately 9.2 million.[3] Based on the experience of The Kamber Group in working with labor unions, I know that lists of the names and addresses of current or retired members of these unions are not publicly available. Accordingly, under the notification plan, a letter will be sent (see Exhibit P) to each of these 56 unions to ask for names and addresses of any current or retired members who worked with or around asbestos or asbestos-containing products, or, if such names and addresses cannot be made available, for some alternative means, such as a mailing by the union at our expense, through which notice of the *Carlough* class action and proposed settlement may be mailed to current or retired union members. Follow-up phone calls to all 56 unions on this list will be made. To the extent permitted by the unions, complete individual notice packets (consisting of Exhibits I, A, and B) will be sent, by first class mail, to all names and addresses generated through these efforts. If, however, some of these unions are willing to enclose notification materials to their current or retired members along with some other union mailing, such as pension checks, but are willing to send only a one-page notification rather than a complete individual notice packet, we will provide those unions with copies of the short ad

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[2] Reference books that were used to draw up this list were the *Directory of U.S. Labor Organizations* (BNA, 1984-85 & 1992-93 eds.), and *Organizations Affiliated with American Federation of Labor and Congress of Industrial Organizations* (AFL-CIO, Jan. 31, 1992).

[3] This number was computed from the *Directory of U.S. Labor Organizations* (BNA, 1992-93 ed.).

(Exhibit E) for insertion in these mailings, and will pay all costs associated with this mailing.

23. The Department of Labor maintains lists of local unions affiliated with the 56 national and international unions listed in Exhibit O. For any national or international union that declines our request, outlined in Paragraph 22 above, for help in mailing notification to their current or retired members, letters will be sent to certain local unions affiliated with that national or international union to make the same request for help in the notification campaign that was made to the national or international union. The local unions that will be contacted will be those in areas where the listings I have of CCR case filings and jobsites shows that there have been large numbers of claims filed against one or more CCR defendants. The letter that will be sent to these local unions will be essentially identical to the letter attached as Exhibit P. To the extent permitted by these local unions, complete individual notice packets (consisting of Exhibits I, A, and B) will be sent, by first class mail, to all names and addresses generated through these efforts. As with the national and international unions, if certain local unions are willing to mail to current or retired members only a one-page notification concerning the *Carlough* class action and settlement, rather than a complete individual notice packet, the short ad (Exhibit E) will be used, and we will pay all costs associated with this mailing.

24. As noted in Paragraph 7 above, CCR counsel provided me with a list, by name and address, of approximately 1000 attorneys, which is the most complete list that the CCR has of attorneys who have represented plaintiffs who have filed claims against one or more CCR defendants. Under the notification plan, an information and notification packet, consisting of an appropriate cover letter (Exhibit J), and Exhibits A, B, C, E, and F will be sent, by first class mail, to each attorney on this list. The cover letter will ask each attorney to furnish to me the names and addresses of any potential class members known by the attorney so that complete individual notice packets (Exhibits I, A and B) may be mailed to those potential class members. The letter to these attorneys will make clear that I will keep the names of potential class members furnished to me confidential, and that I will not

disclose those names to the settling parties (other than as part of a list of class members who receive individual notice).

25. Finally, every notification document designed for distribution to unions or other organizations or to mass media (Exhibits C — E & G) urges class members to call a special 800 telephone number. A script that the 800 telephone operators will follow is attached as Exhibit H. Every potential class member who calls the 800 number, and who has not already received a complete individual notice packet (consisting of Exhibits I, A and B) will be sent such a packet by first-class mail. In this way, the notification materials should help generate a substantial list of additional potential members of the *Carlough* class to whom a complete individual notice packet may be mailed.

NOTIFICATION THROUGH PLAINTIFFS' ATTORNEYS

26. As noted in Paragraph 24 above, information and notification packets, consisting of Exhibits J, A, B, C, E, and F will be mailed to over 1,000 attorneys who have represented plaintiffs against one or more CCR defendants. In addition to asking each attorney for the names of potential class members, the cover letter (Exhibit J) will also ask each plaintiffs' attorney to use the notification materials to help notify potential class members of the class action and proposed settlement in any way that the attorney can.

NOTIFICATION THROUGH UNIONS AND OTHER LABOR BODIES

27. As explained in Paragraph 22 above, Exhibit O is a list of 56 national and international unions (with a total membership of some 9.2 million) that are likely to have current or retired members who are members of the *Carlough* class. Under the notification plan, information and notification packets will be sent to the President, Secretary-Treasurer, General Counsel, Health & Safety Director, Retiree/Pension Director, and Publication Editor at each of the 56 unions. These are the key officials in every union, and should include any officials conceivably responsible for notifying the union membership of the *Carlough* class action and settlement, or involved with those responsible in the union for giving such notice. The packet will consist of a cover letter (Exhibit K), Exhibits A, B, C, E, and F. These mailings will urge each union

to use all reasonable means to notify its current members and retirees concerning the class action and settlement; and the camera-ready materials (Exhibit E) will be available for immediate use in any publications distributed by the unions to their current members and retirees.

28. Identical information and notification packets will be sent to the President, Secretary-Treasurer, and publication editors of five trade and industrial departments of the AFL-CIO (the Building and Construction Trades Department, the Industrial Union Department, the Maritime Trades Department, the Metal Trades Department, and the Transportation Trades Department). Identical packets will be mailed to the same officials in the AFL-CIO State Federations, the AFL-CIO Central Labor Councils, the State Building Trades Councils, and the Local Building Trades Councils. All of these organizations constitute national, state, or local federations comprised of various combinations of the 56 unions listed in Exhibit O. In addition, identical packets will be sent to the President and Secretary-Treasurer at the approximately 10,000 to 15,000 local labor unions affiliated with these 56 national unions in areas where the CCR case and jobsite listings show that there have been large numbers of claims filed against one or more CCR defendants. Again, the purpose of these mailings is to encourage union officials to use the materials provided to notify their current members and retirees concerning the class action and settlement.

29. As a follow-up to these notification efforts to potentially affected unions, telephone calls will be made to all 56 national unions, and to those labor organizations and local unions in areas where there have been large numbers of claims filed against one or more CCR defendants, to urge them to use the materials provided to notify their current members and retirees of the class action and proposed settlement.

NOTIFICATION THROUGH TRADE OR OTHER ORGANIZATIONS

30. A similar notification plan will target trade or other organizations whose members may potentially be in the class, or whose members may be able to assist in the notification effort. Using the lists from CCR counsel of the asbestos or asbestos-containing products and occupations where exposure to these

products potentially occurred, my experience in the Johns-Manville notification campaign, reference books listing and describing various trade and other organizations, and, in some cases, telephone calls to the organizations themselves, I drew up a list of 40 trade or other organizations that may potentially have members in the *Carlough* class, or that may have members that may be able to assist in the notification effort.[4] This list (with the approximate number of members in each organization) is attached to this Declaration as Exhibit Q. The total membership in those 40 organizations exceeds 38.7 million. Under the notification plan, an information and notification packet will be sent to each of these 40 organizations. As with the packets sent to the various labor organizations, the information and notification packet sent to these organizations will include a cover letter (Exhibit M), and Exhibits A, B, C, E and F. These mailings will urge each organization to use all reasonable means to notify its members concerning the class action and settlement; and the camera-ready materials (Exhibit E) will be available for immediate use in any publications distributed by the organization to its members.

NOTIFICATION THROUGH TRADE, INDUSTRIAL, AND LEGAL PUBLICATIONS

31. Relying upon the same information and experience that I used to derive the lists of unions and trade or other organizations with potential class members (see Paragraphs 22 and 30 above), various reference works listing and describing numerous trade, industrial, and professional publications, and, in some cases, telephone calls to the publication in question, I derived a list of 41 trade, industrial, or legal publications whose readers may include individuals who worked with or around asbestos or asbestos-containing products, or counsel that routinely represent plaintiffs in the asbestos personal injury litigation.[5] This list of publications,

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[4] Reference books that were used to draw up this list of associations were the *Associations Yellow Book* (Vol. 1, No. 2, Winter 1992), and the *Encyclopedia of Associations* (26th ed. 1991).

[5] Reference books that were used to draw up this list of publications were *Bacon's Media Alerts* (10th ed. 1992), and *Gebbie Press - All in One Directory* (1990).

including circulation figures, is attached to this Declaration as Exhibit R. The total circulation of these 41 publications is approximately 4.5 million. Under the notification plan, an information and notification packet will be sent to each of these publications. These packets will include a cover letter (Exhibit M), and Exhibits A, B, C, E and F. The cover letter will urge each publication to use these notification materials to publicize the class action in *Carlough* and the proposed settlement to its readers.

NOTIFICATION THROUGH PAID MEDIA

32. A fifth element of the notification plan is a paid media strategy designed to notify class members of the class action and proposed settlement, and to encourage them to call the special 800 number or to call or write Class Counsel to receive a complete individual notification packet. The paid media strategy has three elements: two rounds of print advertising that will be placed in the newspapers (primarily the Sunday editions) in numerous key media markets and in *Parade* magazine; and a thirty-second television advertisement that will be aired throughout the week prior to the first round of print advertising.

33. Before designing the paid media plan, I ascertained the primary demographic features of the class members to be notified. I was informed by CCR counsel that the majority of occupational exposure to asbestos or asbestos-containing products occurred before the end of the 1970s, that the CCR member companies had ceased supplying most of those products by the early 1980s, and that the latency period for the development of asbestos-related disease is, in many cases, 20 years or more. Using this information, and similar information that I obtained in my experience with the Johns-Manville notification campaign, I determined that the primary target group for notification would likely be males of ages 45 and older. Accordingly, the paid media plan that I designed is weighted towards this group, although media vehicles selected are designed also to target males and females of ages 35 or greater.

34. As a first step in designing the paid media plan, I used the case and jobsite lists furnished to me by CCR counsel (see Paragraph 7 above) to identify the media markets (referred to as Areas of Dominant Influence, or ADIs) where this data showed that

cases had been filed against one or more CCR defendants from the early 1970s forward. I then went through each ADI and identified the dominant newspaper or newspapers, and any secondary newspaper where the case or jobsite lists showed that a significant number of cases had been filed. Once I had assembled this list of newspapers, I checked to make sure that the list included newspapers in the top 50 U.S. media markets, areas where large shipyards had been located, and major retirement areas. At the end of this process, I had assembled a list of 292 newspapers, covering 136 ADIs. Those newspapers and ADIs are listed in Exhibit S.

35. Under the notification plan, a first round of print advertising will run in all 292 newspapers (136 ADIs). The approximate circulation of those 292 newspapers is 46 million. The one-half page print advertisement that will be published in each of the 292 newspapers is attached as Exhibit C. (The ad will be a full page in tabloid-style newspapers.) The ad will be run in the Sunday edition of those newspapers (unless the newspaper does not publish on Sunday, in which case the ad will be run during the week). Local Sunday newspapers were selected because they generally have the largest circulation of any day of the week, and because Sundays generally provide more leisure time for an individual to read the newspaper. To the extent possible, the ad will be placed in the sports section of the newspaper.

36. Under the notification plan, a second round of print advertising will be run in 59 media markets or ADIs, which are listed in Exhibit T. These 59 ADIs include 114 newspapers, with an approximate total circulation of 28 million. These 59 ADIs and 114 newspapers were selected because large absolute numbers of claims were filed against one or more CCR defendants in these ADIs, or large numbers of claims were filed in these ADIs as compared to the population in the ADI. This second round of print advertising, which will be run two weeks after the first round, will again consist of the same one-half or full page ad (attached as Exhibit C) and again will be run, to the extent possible, in the sports section in the Sunday newspapers in these 59 ADIs.

37. The same ad (Exhibit C) will also be placed during this time period in a full page of *Parade*, which is the largest general circulation magazine in the United States. *Parade* has a circulation of over 36 million and a readership of 73 million; it is included in

the Sunday edition in 351 local newspapers in the U.S. In addition, *Parade* reaches 35.9% of all men in the U.S. who are forty and older and who are not employed in professional, managerial, sales, or clerical positions, and 38% of all women in the U.S. who are forty and older and who are not employed in professional or managerial positions. The advertising in *Parade* will not only constitute a third round of advertising in numerous media markets, it will reach 11.8 million U.S. households that are outside the 136 ADIs where print advertising will be purchased.

38. I also used the list of ADIs derived from the case and jobsite lists (see Paragraph 34 above) to decide in which ADIs television advertising should be purchased. In selecting ADIs for television, I looked at several factors: areas where there have been a large absolute number of claims filed against one or more CCR defendants from the early 1970s forward; areas where there have been a large number of claims filed against one or more CCR defendants as compared to the population in the ADI; contiguous ADIs in areas where there are concentrations of cases against one or more CCR defendants; ADIs where major shipyards were located; ADIs that are major retirement markets; and ADIs that are the major ADI in an entire state. At the end of this process, I had assembled a list of 80 ADIs, which are listed in Exhibit U.

39. Under the notification plan, a thirty-second television ad will be aired in these 80 ADIs throughout the week before the first round of paid newspaper advertising appears in Sunday newspapers. The text of the thirty-second television ad is attached as Exhibit D to this Declaration. As explained above in Paragraph 14, the ad will have both a visual and an audio component, which should increase the likelihood that viewers note the information conveyed in the ad, particularly the special 800 number. That number will be repeated twice during the ad. As the text of the thirty-second ad (Exhibit D) makes clear, the purpose of the ad is to alert potential class members to the class action and settlement, to encourage them to look in their newspapers for the print advertisement, and, finally, to stimulate them to call the 800 number to receive a complete individual notice packet.

40. The television ad will run at all times of the day. The so-called "daypart mix" for the ad is attached as Exhibit V. The daypart and percent of media weight in each daypart were selected

based on programs available and to maximize coverage of the target demographic groups. As Exhibit V illustrates, news programming would be utilized for almost 50% of the daypart mix, in order to highlight the importance and immediacy of the message. Moreover, news programming has the potential of reaching all parts of the target audience, particularly those who are 50 years old or greater. Prime time programming was selected for part of the mix, since it traditionally draws the heaviest viewership. Weekend sports programming will be used where available to target specifically older males. The Early Fringe programming will be used to reach the non-working segment of the target audience, such as spouses and retirees, while Late Fringe and Adult Independent Prime will be used to reach younger members of the target audience, as well as those still in the work force.[6]

41. The strength of a purchase of television advertising time is evaluated by a concept known as "T.V. Households' Gross Rating Points" or "GRPs," which measure the "reach" and "frequency" of a given ad. For the thirty-second ad at issue here, the notification plan calls for a media buy of 400 T.V. Household GRPs in 56 of the 80 media markets or ADIs, and 200 T.V. Household GRPs in the remaining 24 ADIs. The 56 markets (which are listed as "A Markets" in Exhibit V) were selected because they are the largest markets in terms of audience, or because, from the early 1970s forward, they produced the greatest number, relative to their size, of claims against one or more CCR defendants. The 24 remaining markets (which are listed as "B Markets" on Exhibit V) either produced fewer claims against one or more CCR defendants in this time period relative to their size, are smaller media markets in general, and, in some cases, receive some coverage from the larger 56 markets.

42. The 80 markets selected for the media buy include 64 million T.V. Households, which is 69% of all T.V. Households in the United States. A media buy of 400 T.V. Household GRPs in the 56 larger markets means that, during the week of coverage, the thirty-second ad will reach 86.4% of TV Households within those

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[6] To determine an appropriate "daypart mix" for television ad, I relied on a Telmar software program, which in turn relies on standard data produced by MRI, Arbitron, and others.

markets, with a frequency of 4.6 times. A media buy of 200 T.V. Household GRPs in the 24 smaller markets means that, during the week of coverage, the thirty-second T.V. ad will reach 73.7% of T.V. Households within those markets, with a frequency 2.7 times. With this level of media buy, the ad should generate 250,286,000 target audience impressions among adults thirty-five years or older, which means that the ad should be seen 250,286,000 times.[7]

PUBLIC SERVICE MEDIA STRATEGY

43. A sixth element of the notification plan is a public service media strategy. This strategy is designed to provide notice of the class action and proposed settlement to potential class members through major print, radio and television outlets throughout the United States. Accordingly, a cover letter (Exhibit M), and a press release or newscast script (Exhibit G) will be mailed to all national radio stations and wire services. In addition, the same materials will be mailed to all major print, radio, and television outlets in the 136 media markets listed in Exhibit S. As explained above, these 136 media markets include the top 50 U.S. media markets, as well as other media markets where concentrations of claims against one or more CCR defendants have been filed. The top 50 U.S. media markets contain 67.12% of the U.S. population. The cover letter accompanying these materials (Exhibit M) will ask that these media outlets assist in publicizing the *Carlough* class action and proposed settlement. In certain large or otherwise significant media markets, follow-up telephone calls will be made to the media outlets receiving these notification packets to encourage them to use the materials sent to them.

NOTIFICATION TO STATE AND FEDERAL COURTS

44. Finally, complete information and notification packets (consisting of Exhibits A, B, C, E, and F) and an appropriate cover letter (Exhibit N), will be sent to the over 1,000 state and federal courts that have handled asbestos personal injury claims (either at

[7] These reach, frequency, and impressions numbers were computed using a Telmar software program which computes reach and frequency by demographics and media markets. This program relies on standard data produced by MRI, Arbitron, and others.

trial or on appeal) against one or more CCR defendants.[8] The cover letter will explain that these materials are being provided to the courts as a courtesy, and will ask the courts to help in the notification effort in any way that they can.

TIMING

45. The notification campaign outlined above would be largely completed within 7 or 8 weeks from its commencement. Mailings of individual notice packets to individuals who have filed claims since January 15, 1993, or whose names and addresses were ascertained from unions or plaintiffs' attorneys, would be completed, to the extent possible, within weeks 3-6. Mailings of notification materials to plaintiffs' attorneys, national and local unions, other labor bodies, trade or other organizations, trade, industrial and legal publications, mass media outlets, and state and federal courts, would be completed in this same time period. The paid television advertisement would run in weeks 4 or 5, with the first round of paid print advertisement on the Sunday at the beginning of week 5 or 6. The second round of paid print advertisement would appear on the Sunday at the beginning of week 7 or 8. The advertisement in *Parade* would also run in this same time period. The mailing of individual notification packets to potential class members who telephone the special 800 number, or to plaintiffs who file claims against one or more CCR defendants after July 31, 1993, would continue throughout the notification period.

MISCELLANEOUS MATTERS

46. I understand that the settling parties plan to obtain a post office box in the name of the Clerk of the Court for receiving Exclusion Requests from class members. They will have the box checked on a daily basis, and they will maintain a list and copies of all Exclusion Requests received.

47. I will maintain records concerning implementation of the notification plan outlined above. Those records will include a list

[8] The addresses for these 1,306 state or federal courts will be obtained from *BNA's Directory of State and Federal Courts, Judges, and Clerks* (4th ed., 1992), and *Want's Federal-State Court Directory* (1993 ed.).

of names and addresses of potential class members to whom individual notice packets (consisting of Exhibits A, B and I) were mailed.

COST

48. As I understand it, the entire cost of the notification campaign will be paid by the CCR defendants. I estimate that the campaign will cost between approximately $5 million and $6 million.

CONCLUSIONS

49. With respect to individual notice to potential class members, the notification plan set forth above includes reasonable efforts to obtain names and addresses of potential class members. Moreover, all the other notification efforts — the notification to plaintiffs' attorneys, unions and other labor bodies, trade or other organizations, trade, industrial and legal publications, the paid and public service media efforts, and the state and federal courts — are designed to encourage potential class members to identify themselves by calling the special 800-number, so that individual notice packets may be sent to them. The inclusion in the individual notice packet of both the full notice (Exhibit A) and the Questions and Answers (Exhibit B) is an attempt to give class members as much information concerning the class action and proposed settlement as possible, in a readable form. In my view, the individual notice components of this notification campaign are as strong as we can reasonably make them.

50. The notice targeted to various labor unions, labor bodies, trade or other organizations, various trade, industrial and legal publications, is also quite comprehensive. To derive the list of 56 national and international unions where notice will be targeted (Exhibit O), I used various reference books and other resources to identify unions with potential class members both within and outside the AFL-CIO. I placed telephone calls to several of these unions. I also looked at historical lists of trade unions, and traced the history of certain unions to discover their current affiliations and titles. To determine the list of 40 trade or other organizations (Exhibit Q) and the 41 trade, industrial and legal publications (Exhibit R), I used several reference books, and often made telephone calls to the organization or publication in question. My

view is that these lists of unions, labor bodies, trade and other organizations, and trade, industrial and legal publications that I compiled are quite thorough. The union officials that will receive notification materials in the 56 unions, in various labor bodies, and in the thousands of affiliated locals, will include virtually every union official that could have some responsibility for the notification of potential class members of the *Carlough* class action and proposed settlement. In short, my view is that the mailing of notification packets to the unions, labor bodies, trade and other groups, and trade, industrial and legal publications will result in notification of thousands of potential class members.

51. The paid media portion of the notification plan outlined above is also extremely strong. The ADIs and newspapers where print advertising will appear include both major media markets and many smaller areas where over twenty years of the asbestos litigation has shown that a significant number of claims have been filed against one or more CCR defendants. The full-page advertisement itself should catch the eye of anyone who worked with or around asbestos or asbestos-containing products, and the inclusion of a product and occupation list in the ad should aid individuals in determining whether or not they are in the class. The paid media portion of the notification plan should be effective to reach both individuals who worked with or around asbestos or asbestos-containing products, and also the spouses and household members who were exposed to asbestos through the occupational exposure of another. The use of both television and print advertising should help reach potential class members who use only one of those two media, and should reinforce the notification among potential class members who both watch television and read newspapers. In many media markets, the notification message will be delivered both through television and three rounds of print media (two rounds of newspaper advertising and the advertisement in *Parade*). The paid media plan in this notification effort is much more extensive and expensive than the plan I designed (and the court approved) for the Johns-Manville notification in 1986.

52. The public service media plan here is also quite comprehensive, since it covers media outlets on a nationwide basis. My experience indicates that many media outlets will run public service articles or announcement concerning this class action, and

that many additional potential class members will receive notification through the public service media.

53. In sum, my experience indicates that the notification campaign outlined above is strong and comprehensive, and should result in broad-scale notification to potential class members of this class action and proposed settlement.

* * * *

I declare under penalties of perjury that the foregoing is true and correct.

DATED: August 14, 1993 /s/ KATHERINE KINSELLA

* * * *

EXHIBIT E

ARTICLE

CLASS ACTION AND PROPOSED SETTLEMENT TO RESOLVE UNFILED ASBESTOS CLAIMS

A proposed settlement to a class action lawsuit seeking personal injury damages for future asbestos claimants will establish an out-of-court administrative system to handle such claims. The class action, filed by three asbestos plaintiffs' counsel, is called *Carlough* v. *Amchem Products, Inc. et al.*, C.A. No. 93-CV-0215 (E.D. Pa.), and is pending in the U.S. District Court in Philadelphia. The defendants in the class action are the 20 member companies of the Princeton, N.J. Center For Claims Resolution (CCR), which are listed below.

The class action includes individuals who were exposed occupationally, or through the occupational exposure of a spouse or household member, to asbestos or asbestos-containing products for which the 20 CCR companies may bear legal liability, and who had not filed a lawsuit by January 15, 1993, based on that exposure to asbestos. Family members or legal representatives of such occupationally exposed individuals are also included in the class. *Individuals who meet the requirements for class membership are class members whether or not they currently have an asbestos-related medical condition.*

"Occupational exposure" to asbestos generally means that an individual's job responsibility involved working with or around asbestos or asbestos-containing products. These exposures usually occurred in industrial settings or during construction activities. "Occupational exposure" to asbestos does not include "environmental exposure," such as that potentially experienced by office workers in buildings where asbestos products were present. Included in the complete "Notice of Rule 23(b)(3) Class Certification," which may be obtained by calling 1-800-847-2727, is a list of asbestos or asbestos-containing products and the occupations in which exposure to these products potentially occurred.

In essence, the proposed settlement will set up a system to compensate class members who meet specific asbestos exposure requirements if and when they contract certain asbestos-related medical conditions. Compensation will also be available in death cases. Compensation amounts reflect amounts paid by the 20 defendant companies to similar claimants whose cases have been settled in the last four years. Over the first 10 years of the settlement, over $1 billion will potentially be paid to approximately 100,000 class members.

If the settlement is approved by the Court, it will settle all claims for asbestos-related personal injury (including claims based on premises ownership or vicarious liability) against the 20 CCR companies by all members of the class who do not exclude themselves from the class. Claims settled will include 1) personal injury, damage or death and all forms of mental or emotional harm; 2) loss of support, services, consortium, society and other valuable services made by spouses, parents, children or other relatives, (including wrongful death and survival actions); 3) punitive, aggravated, or exemplary damages of any sort.

The 20 CCR member companies participating in the proposed settlement are: Amchem Products, Inc.; A.P. Green Industries, Inc.; Armstrong World Industries, Inc.; CertainTeed Corporation; C.E. Thurston and Sons, Incorporated; Dana Corporation; Ferodo America, Inc.; Flexitallic, Inc.; GAF Corporation; I.U. North America, Inc.; Maremont Corporation; Asbestos Claims Management Corporation (formerly known as National Gypsum Company); National Services Industries, Inc.; Nosroc Corporation;

Pfizer Inc.; Quigley Company, Inc.; Shook & Fletcher Insulation Co.; T&N plc; Union Carbide Chemicals and Plastics Company Inc.; and United States Gypsum Company.

A class member may elect to exclude him/herself from the class. The exclusion request must be made in writing postmarked no later than January 24, 1994, and returned to the Clerk of the Court, c/o P.O. Box 40745, Philadelphia, Pennsylvania 19107. An "Exclusion Request" form may be obtained by calling 1-800-847-2727.

Class members who do not exclude themselves from the class will be bound by the results of the class action and a settlement of that class action. The court-appointed Class Counsel, who are listed below, will act as counsel for the class at no expense to class members. Class members who do not exclude themselves from the class may also be represented in the class action by counsel that that class member separately hires.

A hearing will be held by the U.S. District Court in Philadelphia in Courtroom 11A, United States Courthouse, Philadelphia, Pennsylvania, on February 22, 1994, to determine if the proposed settlement should be approved by the Court as fair, adequate and reasonable.

Class members object to the proposed settlement in writing and/or at the fairness hearing. Written objections must be filed with the Clerk of the Court at the address listed below, and postmarked no later than February 8, 1994. Any class member wishing to be heard orally at the hearing should notify the Clerk at the address listed below no later than February 8, 1994.

This article is a summary only. To request a complete individual notice packet and/or exclusion form, call toll free 1-800-847-2727, or contact the court-appointed Class Counsel:

Gene Locks, Esquire

Greitzer and Locks
22nd Floor
1500 Walnut Street
Philadelphia, PA 19102
(215) 893-0100
(215) 985-2960 (FAX)

Ronald L. Motley, Esquire
or
Joseph F. Rice, Esquire

Ness, Motley, Loadholt,
Richardson & Poole
151 Meeting Street, Suite 600
P.O. Box 1137
Charleston, SC 29402
(800) 666-7503
(803) 571-7513 (FAX)

* * * *

ATTENTION

ALL PERSONS WHO HAVE WORKED WITH OR AROUND ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS (WHETHER OR NOT CURRENTLY SUFFERING FROM AN ASBESTOS-RELATED MEDICAL CONDITION)

A proposed class action settlement involving individuals who were exposed occupationally, or through the occupational exposure of a spouse or household member, to asbestos or asbestos-containing products is now pending in the United States District Court in Philadelphia. Family members or legal representatives of exposed persons are also class members.

If you, or a spouse or household member worked with or around asbestos or asbestos-containing products, you may be a class member, and your rights may be affected by this class action and proposed settlement.

If you are a class member, you may exclude yourself from the class. If you are a class member and you do not exclude yourself from the class, you have the right to participate in the class action through counsel, and you will be bound by the results of the class action and any settlement.

For further information about the class action and proposed settlement, and the procedures for exclusion from the class, see your local Sunday newspaper or weekly, or call

1-800-847-2727
or Class Counsel
1-800-666-7503

* * * *

EXHIBIT O

CENTER FOR CLAIMS RESOLUTION
UNION LIST

Allied Industrial Workers of America International Union
(Formerly: International Union United Automobile Workers of America)
Membership: 47,500

Aluminum, Brick and Glass Workers International Union
(Merger of United Brick & Clay Workers of America and United Glass & Ceramics Workers of North America)
Membership: 42,000

Amalgamated Clothing and Textile Workers Union
Membership: 237,000

American Flint Glass Workers Union
Membership: 20,000

Association of Western Pulp and Paper Workers
Membership: 15,000

Brotherhood of Locomotive Engineers
Membership: 20,000

Brotherhood of Maintenance of Way Employees
Membership: 55,000

Brotherhood of Railroad Signalmen
Membership: 9,602

Glass, Molders, Pottery, Plastics and Allied Workers International Union
(Includes: Glass Bottle Blowers Association of the United States & Canada and International Brotherhood of Pottery & Allied Workers, and International Molders & Allied Workers Union)
Membership: 86,400

International Association of Bridge, Structural and Ornamental Iron Workers
Membership: 140,000

International Association of Fire Fighters
Membership: 151,000

International Association of Heat & Frost Insulators and Asbestos Workers
Membership: 12,000

International Association of Machinists and Aerospace Workers
(Includes: Marine and Shipbuilding Workers of America)
Membership: 500,000

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers & Helpers
(Includes: United Cement, Lime, Gypsum and Allied International Union)
Membership: 79,000

International Brotherhood of Electrical Workers
Membership: 730,000

International Brotherhood of Firemen and Oilers
Membership: 25,000

International Brotherhood of Painters and Allied Trades of the United States and Canada
Membership: 143,000

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America
Membership: 1,500,000

International Chemical Workers Union
Membership: 40,000

International Longshoremen's Association
(Includes: International Brotherhood of Longshoremen)
Membership: 60,000

International Longshoremen's and Warehousemen's Union
Membership: 50,000

International Organization of Masters, Mates and Pilots
(Affiliated — Longshoreman)
Membership: 10,000

International Plate Printers, Die Stampers and Engravers Union of North America
Membership: 400

International Union of Bricklayers and Allied Craftsmen
(Includes: United Brick and Clay Workers of America)
Membership: 84,000

International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers
Membership: 150,000

International Union of Elevator Constructors
Membership: 22,000

International Union of Operating Engineers
Membership: 375,000

International Union of Petroleum and Industrial Workers
Membership: 4,000

International Woodworkers of America, U.S.
Membership: 25,000

Laborers' International Union of North America
(Formerly: International Hod Carriers, Building and Common Laborers Union of America, and Journeyman Stonecutters Association of North America)
Membership: 500,000

Mechanics Educational Society of America
Membership: 3,000

Metal Polishers, Buffers, Platers and Allied Workers International Union
Membership: 6,000

National Industrial Workers Union
Membership: 580

National Marine Engineers' Beneficial Association
Membership: 53,000

National Maritime Union
Membership: 20,000

National Organization of Industrial Trade Unions
Membership: 10,000

Oil, Chemical and Atomic Workers International Union
Membership: 110,000

Operative Plasterers' and Cement Masons' International Association of the United States and Canada
Membership: 39,000

Pacific Coast Marine Fireman, Oilers, Watertenders and Wipers Association
Membership: 1,691

Seafarers International Union of North America
Membership: 85,000

Service Employees International Union
Membership: 1,000,000

Sheet Metal Workers' International Association
Membership: 126,000

Stove, Furnace and Allied Appliance Worker's International Union of North America
Membership: 5,000

Transport Workers Union of America
Membership: 96,000

Transportation Communications International Union
(Formerly: Brotherhood of Railway, Airline and Steamship Clerks (BRAC))
(Includes: Brotherhood of Railway Carmen; Railway Patrolmen International Union; American Association of Railway Supervisors; and Transportation Communications Employees Union)
Membership: 130,000

United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States & Canada
Membership: 220,000

United Automobile, Aerospace and Agricultural Implement Workers of America International Union
Membership: 900,000

United Brotherhood of Carpenters and Joiners of America
(Includes: International Union of Wood, Wire and Metal Lathers and Tile, Marble, Terrazo Finishers, Shopworkers and Granite Cutters International Union)
Membership: 53,000

United Mine Workers
Membership: 186,000

United Paperworkers International Union
(Includes: United Paperworkers of America; International Brotherhood of Paperworkers; and International Brotherhood of Pulp, Sulphite and Paper Mill Workers of the United States and Canada)
Membership: 202,000

United Rubber, Cork, Linoleum and Plastic Workers of America
Membership: 100,000

United Steelworkers of America
(Includes: United Stone and Allied Product Workers of America)
Membership: 459,000

United Textile Workers of America
Membership: 18,000

United Transportation Union
(Brotherhood of Locomotive, Firemen and Enginemen and Brotherhood of Railroad Trainmen)
Membership: 145,000

United Union of Roofers, Waterproofers and Allied Workers
(Formerly: United Slate, Tile and Composition Roofers, Damp and Waterproofing Workers)
Membership: 25,000

Utility Workers Union of America
Membership: 55,000

TOTAL MEMBERSHIP: 9,181,173

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

AMENDMENT TO STIPULATION OF SETTLEMENT OF JANUARY 15, 1993 BETWEEN THE CLASS OF CLAIMANTS AND DEFENDANTS REPRESENTED BY THE CENTER FOR CLAIMS RESOLUTION

A. The Stipulation of Settlement Between the Class of Claimants and Defendants Represented by the Center For Claims Resolution, dated January 15, 1993, and filed that day in the above-captioned action, is hereby amended as-follows:

1. The following is added as the final sentence of Part I.N., at page 9: "An Exposed Person has been occupationally exposed to asbestos when that individual's job responsibility involved working with or around asbestos or asbestos-containing products. These exposures usually occurred in industrial settings or during construction activities. 'Occupational exposure' to asbestos does not include 'environmental exposure,' such as that potentially experienced by office workers in buildings where asbestos products were present."

2. In Part III.F., at page 16, the second sentence is revised to read as follows: "The Claimant shall have sixty (60) days from the receipt of that notice to 1) seek reconsideration of the CCR's decision by submitting a written statement to the CCR giving grounds for reconsideration; 2) submit additional information concerning the Claim to the CCR; or 3) invoke the dispute resolution procedures, as set forth in Part IV.C., Part V.C., or Part VI.B. of this Stipulation (depending on the reasons for non-qualification of the Claim)."

3. Part V.B.2., at pages 26-28, is replaced with the following:

"2. Lung Cancer

"The Lung Cancer category shall have the following requirements:

"a. A diagnosis by a Board-certified Pathologist, Pulmonary Specialist, or Oncologist of primary lung carcinoma; *and*

"b. Exposure sufficient to meet the minimum exposure requirements set forth in Part IV of this Stipulation occurring at least twelve (12) years prior to Manifestation of the lung cancer; *and*

"c. One of the following:

"i. Evidence of a Non-Malignant Condition sufficient to meet the requirements of Paragraph B.4 of this Part; *or*

"ii. Chest x-rays which, in the opinion of a Certified B-reader, demonstrate asbestos-related bilateral pleural plaques or asbestos-related bilateral pleural thickening; *and* evidence of fifteen (15) years of occupational exposure to asbestos, to be calculated as specified in subparagraphs (1)-(3) and Paragraph iii below.

"(1) Each year that an Exposed Person can demonstrate that his or her primary occupation, during a substantial portion of a normal work year for that occupation, involved working in areas immediate to where asbestos-containing products were being installed, repaired, or removed under circumstances that involved regular airborne emissions of visible asbestos dust, shall count as one (1) year.

"(2) Each year that an Exposed Person can demonstrate that his or her primary occupation, during a substantial portion of a normal work year for that occupation, involved the direct installation, repair, or removal of asbestos-containing products, shall count as two (2) years;

"(3) Each year that an Exposed Person can demonstrate that his or her primary occupation, during a substantial portion of a normal work

year for that occupation, involved the direct manufacture of asbestos-containing products using raw asbestos fiber, or the direct installation, repair, or removal of asbestos-containing products in a shipyard during World War II (1941-46), shall count as four (4) years.

"iii. For purposes of calculating the years of exposure prescribed above in Paragraph ii above, each year of exposure prior to 1976 shall be counted fully; each year of exposure from 1976 through 1979 shall be counted one-half; and exposures after 1979 shall not be counted. For each year from 1972-75, however, for which the CCR can demonstrate, by a preponderance of the evidence, that the Exposed Person's exposure to asbestos in his or her occupation or trade was, during a substantial portion of that work year, in compliance with the OSHA 8-hour time-weighted average airborne concentration for asbestos exposure at that time, then that year shall count one-half for purposes of calculating the years of exposure prescribed in Paragraph ii. Similarly, for each year from 1976-79 for which a Claimant can demonstrate, by a preponderance of the evidence, that the Exposed Person's exposure to asbestos in his or her occupation or trade was, during a substantial portion of that work year, in excess of the OSHA 8-hour time-weighted average airborne concentration for asbestos exposure at that time, then that year shall count fully for purposes of calculating the years of exposure prescribed in Paragraph ii. Finally, for every year after 1979 for which a Claimant can demonstrate, by a preponderance of the evidence, that the exposed Person's exposure to asbestos in his or her occupation or trade was, during a substantial portion of that work year, in excess of the OSHA 8-hour time-weighted average airborne concentration for asbestos exposure at that time, than that year shall count one-half for purposes of calculating the years of exposure prescribed in Paragraph ii."

4. Part V.C.3., at page 43, is revised to read as follows: "All disputes concerning whether a Claim meets the exposure requirements of any Compensable Medical Category shall be resolved in the manner prescribed in Part IV.C. of this Stipulation."

5. In Part VIII.B.2.a., at page 57, the third sentence is revised to read as follows: "That evaluation shall be based on relevant factors of the traditional tort principles of damages, and the CCR shall weigh and evaluate these factors in accord with its historical practices. Factors to be considered shall include, but not be limited to, type of claim, nature and extent of asbestos disease or injury, questions of medical causation, disability, age, number and age of dependents, special damages, pain and suffering, likelihood and amount of exposure to products manufactured or supplied by the CCR Defendants or the Additional Releasee(s), job history, location of the forum in which a lawsuit for asbestos-related injury or damage could properly be maintained by the Claimant, information concerning historical settlement values, jury verdicts and judgments in comparable cases involving various plaintiffs' counsel in that forum and in other jurisdictions, type of release to be provided by the Claimant, and any other relevant criteria generally utilized in the settlement of litigated tort cases."

6. Part X.A., at pages 67-68, is replaced with the following:

"A. Case Flow

"1. The maximum number of Claimants with Qualifying Claims in each Compensable Medical Category who, in any one year, may sue in the tort system or resort to binding arbitration against the CCR Defendant(s) shall not exceed the following percentages of either the total number of Claims that qualified for payment in each Compensable Medical Category during the previous year or the maximum number of Qualifying Claims that may be paid in each Compensable Medical Category during the previous year (as set forth in Part VIII and Exhibit A to this stipulation), whichever is lower:

Compensable Medical Category	Percentage
Mesothelioma	2%
Lung Cancer	2%
Other Cancer	1%
Non-Malignant Conditions	0.5%

"2. Claimants electing to resolve their Claims under this Part shall proceed to the tort system or to binding arbitration in the order in which they make such an election, subject to the case flow requirements in Paragraph A.1. above. Once the number of Claimants in any Compensable Medical Category who elect to resort to the tort system or to binding arbitration in any one year has reached the case flow maximum for that year as defined in Paragraph A.1. above, then any additional Claimants in that Compensable Medical Category making the election in that year shall be given first priority to proceed to the tort system or to binding arbitration in the next year, and shall be counted in the case flow maximum (as defined above) for that year.

"3. As stated in Paragraph A.2. above, Claimants who elect to resolve their Claims under this Part shall generally proceed to the tort system or to binding arbitration in the order in which they make such an election (so-called "FIFO order"). In any year, however, in which the number of Claimants in any Compensable Medical Category who elect to resort to the tort system or to binding arbitration exceeds the case flow maximum for that year, the Court shall have the authority, upon application from CCR Counsel, Class Counsel, or the AFL-CIO representative (as defined in Part XXIII.C. below), to alter this principle of FIFO order for that year so as to prevent a disproportionate number of Claimants in a Compensable Medical Category represented by one attorney or firm from proceeding to the tort system or to binding arbitration in that year."

7. The following is added as Part XXIII.C. and D., at page 97:

"C. A representative of the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), as designated by the President of that organization, shall have the right to participate equally with Class Counsel in their implementation of this Part, including the right to participate in all phases of the annual audit, and to examine all books and records maintained by the CCR related to the proceeding of Claims under this Stipulation. The AFL-CIO representative shall also have the right to participate equally with Class Counsel in raising with the Court issues pertaining to or arising out of the foregoing matters.

"D. Class Counsel and the AFL-CIO representative shall jointly determine the position that Class Counsel shall take concerning the selection of all arbitrators and medical panel members under the Stipulation. This shall include: (1) the group of five Board-Certified pathologists selected pursuant to Part V.C.1.a.i.; (2) the group of five physicians selected pursuant to Part V.C.2.a.i.; (3) the Exceptional Medical Panel selected pursuant to Part V.D.1; (4) the Extraordinary Claims Panel selected pursuant to Part IX.D.; and (5) the List of Arbitrators developed pursuant to Part XXVI.B."

8. Exhibit D is amended as indicated on the attached revised Exhibit D.

9. Execution by Counterparts. This Amendment to the stipulation may be executed in any number of counterparts and by different signatories to this Amendment to the Stipulation in separate counterparts, each of which taken together shall constitute one and the same Amendment to the Stipulation.

CLASS COUNSEL

/s/ GENE LOCKS
Greitzer and Locks
1500 Walnut Street
Philadelphia, PA 19102

/s/ RONALD L. MOTLEY
Ness, Motley, Loadholt, Richardson & Poole
151 Meeting Street
Charleston, S.C. 29402

CENTER FOR CLAIMS RESOLUTION

/s/ MICHAEL F. ROONEY
Center for Claims Resolution
116-300 Village Boulevard
Princeton, New Jersey 08540
Chief Operating Officer

/s/ JOHN D. ALDOCK
Shea & Gardner
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036-1872
Counsel for the CCR Defendants

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151 Meeting Street
Charleston, S.C. 29402

/s/ WILLIAM R. HANLON
Shea & Gardner
1800 Massachusetts Ave., N.W.
Washington, D.C. 20036-1872
Counsel for the CCR Defendants

Authorized Signature

Amchem Products, Inc. _____(s)_____

A. P. Green Industries, Inc. _____(s)_____

Armstrong World Industries, Inc. _____(s)_____

The Asbestos Claims Management Corp.* (formerly National Gypsum Company) _____(s)_____

CertainTeed Corp. _____(s)_____

C.E. Thurston and Sons, Incorporated _____(s)_____

Dana Corp. _____(s)_____

Ferodo America, Inc. _____(s)_____

Flexitallic, Inc. _____(s)_____

GAF Corp. _____(s)_____

I.U. North America, Inc. _____(s)_____

Maremont Corp. _____(s)_____

National Service Industries, Inc. _____(s)_____

Nosrock Corp. _____(s)_____

Pfizer, Inc. _____(s)_____

Quigley Co. Inc. _____(s)_____

Shook & Fletcher Insulation Co. _____(s)_____

T&N plc _____(s)_____

Union Carbide Chemicals and Plastics Company, Inc. * _____(s)_____

United States Gypsum Co. _____(s)_____

DATED: September 24, 1993

* * * *

EXHIBIT D

The insurers set forth below are hereby identified pursuant to the Stipulation of Settlement, Part XVII (Paragraph B).

ADMIRAL INSURANCE CO.
AETNA CASUALTY & SURETY CO.
AETNA INSURANCE CO.
AFFILIATED FM INSURANCE CO.
AIU INSURANCE CO.
ALLIANZ INSURANCE CO.
ALLIANZ UNDERWRITERS INC.
ALLIANZ UNDERWRITERS INSURANCE CO.
AMERICAN BANKERS INS. CO. OF FLORIDA
AMERICAN CENTENNIAL INSURANCE CO.
AMERICAN EXCESS INSURANCE CO.
AMERICAN HOME ASSURANCE CO.
AMERICAN INSURANCE CO.
AMERICAN MOTORISTS INSURANCE CO.
AMERICAN REINSURANCE CO.
APPALACHAIN INSURANCE COMPANY OF PROVIDENCE
ASSOCIATED INDEMNITY CORP.
ATLANTA INTERNATIONAL INSURANCE CO. BELLEFONTE INSURANCE CO.
BIRMINGHAM FIRE INSURANCE CO.
BIRMINGHAM FIRE INSURANCE COMPANY OF PENNSYLVANIA
BRITAMCO LIMITED

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* The participation of The Asbestos Claims Management Corp. (formerly National Gypsum company) in the Class Action Settlement is subject to the approval of the Bankruptcy Court.

BRITISH NORTHWESTERN INSURANCE CO.
CAISSE INDUSTRIELLE D'ASSURANCE MUTUELLE
CALIFORNIA UNION INSURANCE CO.
CENTENNIAL INSURANCE CO.
CENTRAL NATIONAL INSURANCE CO. OF OMAHA
CHICAGO INSURANCE CO.
CITY INSURANCE CO.
COLONIA INSURANCE CO.
COLONIA VERSICHERUNG AKTIENGESELLSCHAFT
COLUMBIA CASUALTY CO.
COMMERCIAL UNION ASSURANCE CO. LTD.
COMPAGNIE EUROPEENNE DE REASSURANCE
CONSTITUTION STATE INSURANCE CO.
CONTINENTAL CASUALTY CO.
CONTINENTAL INSURANCE CO.
DRAKE INSURANCE COMPANY OF NEW YORK E.C.R.A.
EAGLE STAR INSURANCE CO. LTD.
EMPLOYERS
EMPLOYERS COMMERCIAL UNION INSURANCE CO.
EMPLOYERS COMMERCIAL UNION INSURANCE CO. OF AMERICA
EMPLOYERS INSURANCE OF WAUSAU
EMPLOYERS MUTUAL CASUALTY CO.
EMPLOYERS MUTUAL LIABILITY INSURANCE CO. OF WISCONSIN
EMPLOYERS REINSURANCE
EMPLOYERS' LIABILITY ASSURANCE CORP. LTD.
EMPLOYERS' SURPLUS LINE INSURANCE CO.
EVANSTON INSURANCE CO.
EXCESS INSURANCE COMPANY LTD.
FALCON INSURANCE COMPANY
FEDERAL INSURANCE CO.
FIDELITY & CASUALTY CO. OF NEW YORK
FIREMAN'S FUND INSURANCE CO.
FIREMAN'S FUND INSURANCE CO. OF ILLINOIS
FIRST STATE INSURANCE CO.
FIRST STATE OF BOSTON
FIRST STATE UNDERWRITERS AGENCY OF NEW ENGLAND RESURANCE CORP.
GENERAL ACCIDENT & LIFE ASSURANCE CORP. LTD.
GENERAL REINSURANCE CORP.
GERLING GLOBAL REINSURANCE CO.
GIBRALTAR CASUALTY CO.

GLOBE INDEMNITY CO.
GOVERNMENT EMPLOYEES INSURANCE COMPANY
GRANITE STATE INSURANCE CO.
GREAT AMERICAN INSURANCE CO.
GUARDIAN ROYAL EXCHANGE ASSURANCE LTD.
HAFTPFLICHTVERBAND DER DEUTSCHEN INDUSTRIES V.a.G.
HARBOR INSURANCE CO.
HARTFORD
HARTFORD ACCIDENT & INDEMNITY CO.
HIGHLANDS INSURANCE CO.
HOME INDEMNITY CO.
HOME INSURANCE CO.
HOUSTON GENERAL INSURANCE CO.
HUDSON INSURANCE CO.
INA
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA
INSCO LIMITED
INSURANCE COMPANY OF NORTH AMERICA
INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA
INTERNATIONAL INSURANCE CO.
INTERNATIONAL SURPLUS LINES INSURANCE CO.
INTERSTATE FIRE & CASUALTY CO.
JEFFERSON INSURANCE COMPANY OF NEW YORK
KEMPER
LA PRESERVATRICE FONCIERE TIARD
LANDMARK INSURANCE CO.
LE SECOURS
LEXINGTON INSURANCE CO.
LIBERTY MUTUAL INSURANCE CO.
LILLOISE D'ASSURANCES ET DE REASSURANCES
LLOYD'S SYNDICATES AND LONDON COMPANIES
LONDON (INSCO LIMITED)
LONDON GUARANTEE & ACCIDENT CO. OF NEW YORK
LUMBERMENS MUTUAL CASUALTY COMPANY
MARYLAND CASUALTY CO.
MEAD REINSURANCE CORP.
MICHIGAN MUTUAL INSURANCE CO.
MUTUELLE GENERALE FRANCAISE
MUTUELLES UNIES ASSURANCES

NATIONAL FIRE
NATIONAL SURETY CORP.
NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA
NEW AMSTERDAM CASUALTY CO.
NORTH RIVER INSURANCE COMPANY
NORTH STAR REINSURANCE CORP.
NORTHBROOK EXCESS & SURPLUS INSURANCE CO.
NORTHBROOK INDEMNITY CO.
NORTHBROOK INSURANCE CO.
NORTHWESTERN NATIONAL INSURANCE CO.
NUTMEG INSURANCE CO.
OCEAN CASUALTY INSURANCE CO.
OLD REPUBLIC INSURANCE CO.
PACIFIC EMPLOYERS INSURANCE CO.
PENNSYLVANIA MANUFACTURERS' ASSOCIATION INSURANCE CO.
PHOENIX ASSURANCE
PROTECTIVE NATIONAL INSURANCE CO. OF OMAHA
PRUDENTIAL ASSURANCE COMPANY LTD.
PRUDENTIAL REINSURANCE CO.
PURITAN INSURANCE CO.
RANGER INSURANCE CO.
RELIANCE INSURANCE
REPUBLIC INSURANCE CO.
ROYAL GLOBE INSURANCE COMPANY
ROYAL INDEMNITY CO.
ROYAL INSURANCE COMPANY LTD.
SAFECO INSURANCE COMPANY OF AMERICA
SAFETY MUTUAL CASUALTY CORP.
ST. PAUL FIRE AND MARINE INSURANCE CO.
ST.PAUL GUARDIAN INSURANCE CO.
STANDARD ACCIDENT INSURANCE CO.
STONEWALL INSURANCE CO.
STONEWALL SURPLUS LINES INSURANCE CO.
SUN ALLIANCE & LONDON INSURANCE
THE STUYVESANT INSURANCE CO.
TOKIO MARINE AND FIRE INSURANCE CO., LTD.
TRANSPORT INDEMNITY CO.
TRAVELERS
TRAVELERS INDEMNITY CO.
TRAVELERS INSURANCE CO.
TWIN CITY FIRE INSURANCE CO.

U.S. FIRE INSURANCE CO.
UNIGARD MUTUAL INSURANCE CO.
UNION DES ASSURANCES DE PARIS
UNITED STATES FIDELITY &
GUARANTY CO.
ZURICH
ZURICH AMERICAN INSURANCE COMPANY OF
ILLINOIS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civ. A. No. 93-0215

EDWARD J. CARLOUGH, et al.,
Plaintiffs,

v.

AMCHEM PRODUCTS, INC., et al.,
Defendants and
Third Party Plaintiffs,

v.

ADMIRAL INSURANCE COMPANY, et al.
Third Party Defendants.

MEMORANDUM

Reed, J. October 6, 1993

This lawsuit is a class action for asbestos-related personal injuries. This memorandum opinion addresses whether this Court has subject matter jurisdiction over this case.

I. BACKGROUND

On January 15, 1993, counsel for the plaintiff class (or the "*Carlough* class") filed the complaint in this action along with motions for class certification and for approval of a proposed settlement agreement ("proposed settlement" or "settlement") between the plaintiff class and the defendants. The complaint alleges that the defendants, members of the Center for Claims Resolution ("the CCR defendants"), are liable to the plaintiff class under the legal theories of (1) negligent failure to warn, (2) strict liability, (3) breach of express and implied warranty, (4) negligent infliction of emotional distress, (5) enhanced risk of disease, (6) medical monitoring, and (7) civil conspiracy. In their complaint,

the named plaintiffs allege that jurisdiction is based upon diversity of citizenship and that the amount in controversy for each member of the plaintiff class exceeds $100,000.

On the same day as the complaint was filed, the CCR defendants answered the complaint and joined in plaintiffs' request that the class be certified and the settlement agreement approved.

On January 29, 1993, the Honorable Charles R. Weiner of this Court conditionally certified an opt-out class consisting of:

> 1. All persons (or their legal representatives) who have been exposed in the United States or its territories (or while working aboard U.S. military, merchant or passenger ships), either occupationally or through occupational exposure of a spouse or household member, to asbestos or to asbestos containing products for which one or more of the defendants may bear legal liability and who, as of January 15, 1993, reside in the United States or its territories, and who have not, as of January 15, 1993, filed a lawsuit for asbestos-related personal injury or damage, or death in any state or federal court against the defendant(s) (or against entities for whose actions or omissions the defendant(s) bear legal liability).
>
> 2. All spouses, parents, children, and other relatives (or their legal representatives) of the class members described in paragraph 1 above who have not, as of January 15, 1993, filed a lawsuit for the asbestos-related personal injury, or damage, or death of a class member described in paragraph 1 above in any state or federal court against the defendant(s) (or against entities for whose actions or omissions the defendant(s) bear legal liability).

Also on January 29, 1993, Judge Weiner assigned to me the scheduling and review of settlement procedures and the resolution of objections of the settlement itself. On March 1, 1993, I issued a Rule to Show Cause ordering that a preliminary hearing be held, and memoranda of law submitted, as to, *inter alia*, the relevant considerations in ultimately evaluating the fairness, adequacy and reasonableness of the settlement. At that time, numerous motions and objections were filed relating to certain threshold matters such

as justiciability and diversity jurisdiction.[1] Because these jurisdictional issues relate to the very power of the Court to hear this case and ultimately bind the parties to the settlement, on June 2, 1993, I issued a Scheduling Order setting dates for briefing and argument on all objections to this Court's subject matter jurisdiction. Various objectors filed memoranda of law explaining the legal bases for their objections, to which the named plaintiffs and the CCR defendants (hereinafter the "settling parties") responded. A hearing was held on August 23, 1993 at which time the objectors and the settling parties were heard.

This memorandum addresses the four principal threshold issues raised by the objectors: standing, collusion, mootness and satisfaction of the amount in controversy for purposes of diversity jurisdiction. I do not address all of the objections raised in the memoranda of law and/or at the August 23, 1993 hearing. However, because of the significance of this lawsuit and the large number of parties claiming an interest, it is necessary to consider these threshold issues in considerable detail.

II. DISCUSSION

A. Standing

It is fundamental that a federal court lacks jurisdiction to hear any matter that is not a justiciable case or controversy under Article III of the U.S. Constitution, and that an action is not justiciable if the plaintiff does not have standing to sue. *Bender v. Williamsport Area School District*, 475 U.S. 534, 541-42 (1986). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 498 (1975). This question is answered by determining whether the plaintiff has a "personal stake in the outcome of the controversy." *Id.* at 498-99. Such a personal stake assures "concrete adverseness which sharpens the presentation of the issues." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 804 (1985) (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)). The Supreme Court has held that a party has the requisite personal stake

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[1] On April 15, 1993, Judge Weiner dismissed these motions without prejudice to their being filed as objections to the fairness of the proposed settlement.

if s/he can demonstrate that: (1) s/he personally has suffered a concrete injury in fact, (2) the injury is fairly traceable to the challenged conduct, and 3) the injury is likely to be redressed by a favorable decision. *Allen v. Wright*, 468 U.S. 737, 751 (1984) (citing *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982)).

The plaintiff always bears the burden of establishing the elements of standing. *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130, 2136 (1992). And, these elements "are not mere pleading requirements but rather an indispensable part of the plaintiff's case[.]" *Id.* As such, "each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Id.*

Although these three elements appear straightforward, the Supreme Court has more than once acknowledged that "the concept of 'Article III standing' has not been defined with complete consistency in all of the various cases decided by [the] Court which have discussed it[.]" *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (quoting *Valley Forge*, 454 U.S. at 475). The Article III policies which are served by the standing requirement, however, have remained clear and constant. It is thus helpful to look to these policies when applying the elements of standing to a particular case.

First and foremost, the standing requirement preserves the separation of powers by limiting the matters that the judicial branch may address. *Lujan*, 112 S. Ct. at 2136; *Allen*, 468 U.S. at 752. In essence, standing doctrine is "founded in concern about the proper — and properly limited — role of the courts in a democratic society." *Warth*, 422 U.S. at 498. Under our tripartite system of government, pronouncements about general social problems are left to the legislature. Thus, if a plaintiff lacks a personal stake in the litigation at hand, the court finds itself in the position of extending its role beyond that intended for the judiciary under Article III. *Allen*, 468 U.S. at 750.

Second, the standing requirement improves judicial decision-making because it "assures a factual setting in which the litigant asserts a claim of injury in fact[.]" *Valley Forge*, 454 U.S. at 472. This factual setting prevents a federal court from passing judgment

on ill-defined issues or controversies which could "pave the way for lawsuits which have some, but not all, of the facts of the case actually decided by the court." *Id.* In other words, the injury complained of must be sufficiently concrete to inform the court of the consequences of its decision. Indeed, the Supreme Court has recognized that judicial review is effective largely because it avoids issues presented in an abstract form. *United States v. Richardson*, 418 U.S. 166, 194 (1974) (Powell, J., concurring).

Third, the standing requirement assures that the federal courts do not become "a vehicle for the vindication of the value interests of concerned bystanders." *United States v. Students Challenging Regulatory Agency Procedures(SCRAP)*, 412 U.S. 669, 687 (1973). The federal courts are reserved for litigants whose lives will be directly affected by the outcome of the lawsuit. And, the injury-in-fact requirement serves to distinguish those litigants from others with a mere interest in the issue. *Id.* at 689 n.14. Without this requirement, the federal courts would be reduced to "publicly funded forums for the ventilation of public grievances[.]" *Valley Forge*, 454 U.S. at 473. Connected with this policy, of course, is the notion that those directly concerned with the questions at issue are likely to present their cases more effectively.

In this lawsuit, the objectors claim that many of the members of the *Carlough* class do not have Article III standing because they have not sustained an "injury in fact." The objectors note that the *Carlough* class includes those who have been occupationally exposed to asbestos but who do not manifest any asbestos-related condition (hereinafter "the exposure-only plaintiffs"). And, in their memoranda of law, the objectors point to several state and federal cases which have held that "subclinical injury resulting from exposure to asbestos is insufficient to constitute actual loss or damage to a plaintiff's interest required to sustain a cause of action under generally applicable principles of tort law." *Schweitzer v. Consolidated Rail Corp.*, 758 F.2d 936, 942 (3d Cir.), *cert. denied*, 474 U.S. 864 (1985); *see also Alim v. Vaughn* 1992 U.S. Dist. LEXIS 12503 (E.D. Pa. Aug. 18,1992); *Hannibal v. Lyons*, 1990 U.S. Dist. LEXIS 8261 (E.D. Pa. July 2, 1990); *Giffear v. Johns-Manville Corp.*, 1993 Westlaw 349881 (Pa. Super. Sept. 16, 1993); *Marinari v. Asbestos Corp.*, 612 A.2d 1021 (Pa. Super. 1992). The objectors argue that the lack of a cause of action under

applicable state tort law mandates a finding that the exposure-only plaintiffs have alleged no injury in fact for purposes of Article III standing.[2]

In response, the settling parties argue that exposure to a toxic substance is sufficient injury in fact and that, for purposes of Article III standing, it is irrelevant whether the plaintiffs' injuries support a valid legal claim.

It is true that prior to 1970, the test for Article III standing was the so-called "legal interest" test. *See Alabama Power Co. v. Ickes*, 302 U.S. 464, 478-80 (1938); G. Nichol, *Injury and The Disintegration of Article III*, 74 Calif. L. Rev. 1915, 1920 (1986). Under that test, a plaintiff only had Article III standing "if the actions of the defendant harmed a 'legal interest' of the plaintiff." *Alabama Power Co.*, 302 U.S. at 478-80. In other words, plaintiffs had to show injury sufficient to sustain a valid cause of action to have standing to sue in federal court.

In *Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970), however, the Supreme Court jettisoned the "legal interest" test and adopted the "injury in fact" test. According to the Supreme Court in *Camp*, "[t]he 'legal interest' test goes to the merits" and is thus "quite distinct from the problem of standing." *Id.* at 152-53 & n.1. With the adoption of the injury in fact test, the Supreme Court "intended the injury standard to insulate the case or controversy determination from the sway of the claim on the merits." Nichol, *supra*, at 1923-24. In the years since the *Camp* decision, the Supreme Court has stressed that the requirement of standing "focuses on the party seeking to get his [or her] complaint before a federal court *and not on the issues [s/]he wishes to have adjudicated*." *Valley Forge*, 454 U.S. at 484 (quoting *Flast v. Cohen*, 392 U.S. 83, 99 (1968) (emphasis added)). For example, in *Davis v. Passman*, 442 U.S. 228 (1979), the Supreme Court reversed the lower court's holding as to standing, and stated:

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[2] The objectors concede, and I agree, that those members of the plaintiff class who already manifest an asbestos-related condition have Article III standing to bring this lawsuit.

> The Court of Appeals appeared to confuse the question of whether petitioner had standing with the question of whether she asserted a proper cause of action.... The nature of petitioner's injury ... is relevant to the determination of whether she has "alleged such a personal stake in the outcome of the controversy . . . " And under the criteria we have set out, petitioner clearly has standing to bring this suit.... Whether petitioner has asserted a cause of action, however, depends not on the quality or extent of her injury, but on whether the class of litigants of which petitioner is a member may use the courts to enforce the right at issue.

Id. at 239-40 n.18 (citations omitted).[3]

In sum, the Supreme Court has made clear that the Article III determination "in no way depends on the merits of the plaintiff's [claim]." *Whitmore*, 495 U.S. at 155 (quoting *Warth*, 422 U.S. at 500).[4] As one commentator put it:

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[3] Many other courts have recognized that standing looks only to the existence of a factual injury and not the magnitude of legal significance of that injury. *National Wildlife Fed'n v. Burford*, 871 F.2d 849, 852 (9th Cir. 1989); *Consolidated Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 258 n.5 (2nd Cir. 1989), *opinion modified on other grounds*, 890 F.2d 569 (2nd Cir. 1989); *Haskell v. Washington Township*, 864 F.2d 1266, 1275 (6th Cir. 1988); *Coalition for Environment v. Volpe*, 504 F.2d 156, 168 (8th Cir. 1974); *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 61 (S.D. Ohio 1991); *Honey v. George Hyman Constr. Co.*, 63 F.R.D. 443, 446-47 (D.D.C. 1974).

[4] Also, in *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59 (1978), the Supreme Court held that the plaintiffs' allegations of environmental and health injuries caused by the construction of two nuclear plants were sufficient to satisfy the injury in fact requirement for Article III standing. The plaintiffs in *Duke Power* challenged the constitutionality of the Price-Anderson Act which imposes an aggregate limit on utility company liability for nuclear accidents. The Court held that, for purposes of Article III standing, it was of no moment that plaintiffs' injuries were not directly related to the constitutional attack on the statute. *Id.* at 78-79. The Court stated that, except for certain taxpayer suits, no subject matter nexus between the right asserted and the injury alleged was required. *Id.* In other

> The terminology employed - injury "in fact" rather than "in law," layperson's injury rather than lawyer's injury — suggests the Court's desire to convert the case or controversy hurdle to a straightforward and objective measurement uninfluenced by the attractiveness of the cause of action ...
> ...
> By employing a test of simple harm, the justices could free the system of constitutional review from ill-fitting common law forms. Injury in fact... could be ascertained without "premature value judgments" about... the merits of the claim ...

Nichol, *supra*, at 1924. This Court has expressly recognized this principle in the context of another nationwide asbestos case:

> Standing, which derives from the article III case or controversy requirement, is met when the plaintiff can demonstrate "injury in fact." To what extent that injury is legally cognizable under the laws of the various jurisdictions is a separate inquiry.

In re Asbestos School Litigation, 104 F.R.D. 422, 425 n.1 (E.D. Pa. 1984) (citation omitted), *amended in other respects*, 107 F.R.D. 215 (E.D. Pa. 1985), *aff'd in part and rev'd in part on other grounds*, 789 F.2d 996 (3d Cir. 1986).

Other lower courts have also recognized the distinction between the existence of an "injury in fact" and the legal significance of that injury by holding that, for purposes of determining Article III standing, the plaintiff's legal theories must be accepted as valid. *See Chiles v. Thornburgh*, 865 F.2d 1197, 1202 (11th Cir. 1989) ("just as we accept the validity of the plaintiff's factual assertions, we must also accept the validity of the plaintiff's theory of a cause of action"); *Goldwater v. Carter*, 617 F.2d 697, 701-02 (D.C. Cir.) ("For purposes of the standing issue,

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words, the Court did not look to the plaintiffs' cause of action to determine whether they had alleged sufficient injury in fact. The *Duke Power* holding, therefore, supports the settling parties' contention that I need not look to the character or merits of the plaintiffs' claims in this case when determining whether they have alleged injury in fact for purposes of Article III standing.

we accept, as we must [plaintiff's] pleaded theories as valid."), *vacated on other grounds*, 444 U.S. 996 (1979); *see also United States v. Nichols*, 841 F.2d 1485, 1498 (10th Cir. 1988). *But see Robinson v. Vaughn*, 1992 U.S. Dist. LEXIS 19518 (E.D. Pa. Dec. 2, 1992) (court cited to Pennsylvania tort law and held that prisoner exposed to asbestos did not have injury in fact).[5] It is because of this distinction that many federal courts have dismissed cases for failure to state a claim only after concluding that they have subject matter jurisdiction over the case. *See, e.g., Angus v. Shiley, Inc.*, 989 5.2d 142 (3d Cir. 1993); *LFC Lessors, Inc. v. Pacific Sewer Maintenance Corp.*, 739 F.2d 4 (1st Cir. 1984); *Indiana Hi-Rail Corp. v. CSX Transp., Inc.*, 818 F. Supp. 1254 (S.D. Ind. 1993); *Ronwin v. Smith Barney Harris Upham & Co.*, 807 F. Supp. 87 (D. Neb. 1992), *aff'd without op.*, 996 F.2d 1221 (8th Cir. 1993); *Grant v. Coca-Cola Bottling Co.*, 780 F. Supp. 246 (D.N.J. 1991); *Hough v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 757 F. Supp. 283 (S.D.N.Y.), *aff'd without op.*, 946

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[5] The Honorable Louis C. Bechtle (then Chief Judge) in *Robinson* held that the plaintiff, a prisoner who claimed he was exposed to asbestos while incarcerated, failed to establish that he suffered an injury in fact because he had not been diagnosed with an asbestos-related condition. *Robinson*, 1992 U.S. Dist. LEXIS 19518, at *5. Judge Bechtle held this after looking to Pennsylvania tort law under which "mere exposure to asbestos, absent some manifestation of an asbestos-related disease, does not give rise to a cause of action." *Id.* at *4-*5 (citing *Marinari*, 612 A.2d at 1028). Judge Bechtle also stated that "mere exposure to asbestos in prison, and a prison official's failure to warn about the presence of asbestos, is insufficient as a matter of law to establish a constitutional deprivation." *Id.* at *5.

Given the analysis reflected in this memorandum, I respectfully disagree with Judge Bechtle's holding as to injury in fact and agree with his statement that mere exposure to asbestos cannot give rise to a constitutional claim. Indeed, on an earlier occasion, I reached the merits of a prisoner's claim that he was exposed to asbestos in prison and held that, because he did not suffer from an asbestos-related illness, he failed to establish a constitutional deprivation. *Alim v. Vaughn*, 1992 U.S. Dist. LEXIS 12503, *4 (E.D. Pa. Aug. 18, 1992).

F.2d 883 (2d Cir. N.Y. 1991); *Wilson v. Briscoe*, 1990 U.S. Dist. LEXIS 9514 (D.D.C. July 30, 1990).

Almost directly on point is *Bowling v. Pfizer, Inc.*, 143 F.R.D. 141 (S.D. Ohio 1992). In that case, the defendants were manufacturers of heart valves that later proved faulty. The plaintiff class included those implanted with a heart valve that had not fractured. Those plaintiffs wished to recover for their fear or anxiety that their heart valves might fracture in the future. In its decision approving the proposed settlement, the district court held that these class members might not have had a valid cause of action under applicable tort law. *Id.* at 147-48. Indeed, before the settlement was reached, the defendants had moved to dismiss the claims of these plaintiffs for failure to state a claim upon which relief could be granted. However, because the district court was informed of the settlement negotiations, it delayed ruling on the defendants' motion. *Id.* Ultimately, the court approved the settlement and never ruled on the motion to dismiss.

The *Bowling* court was under a duty, as are all federal courts, to satisfy itself that those plaintiffs with properly functioning heart valves had standing to sue for damages. The fear and anxiety of those plaintiffs along with the medical expenses involved with monitoring their heart valves was enough to satisfy the injury in fact requirement. This is true even though they might not have stated a valid legal claim. And, as long as the plaintiffs had standing to bring their action in federal court, the court had subject matter jurisdiction to decide whether the proposed settlement was fair.[6]

Going beyond the case law, it is easy to understand the logic behind the change from the "legal interest" test to the "injury in fact" test. If federal courts must look to whether plaintiffs in

[6] This is true even though the court stated that it would have granted the defendants' motion to dismiss these plaintiffs' claims had the parties not reached a settlement agreement. Indeed, it is not uncommon for parties to settle before the court rules on a pending motion to dismiss for failure to state a claim upon which relief can be granted. Any question as to whether a plaintiff's claim is cognizable becomes irrelevant once the case has settled.

federal court under diversity jurisdiction have stated a valid cause of action in order to find that they have standing to sue in federal court, state law and not federal law would control the scope of Article III standing. Indeed, the same factual injury might be sufficient to confer standing in the federal courts of one state but not in the federal courts of another. Federal standing law, therefore, would not only depend on state law, it would vary from state to state. Because standing is a question of federal constitutional law, *Phillips Petroleum Co.*, 472 U.S. at 804, such a lack of uniformity would be undesirable. Also, if a plaintiff had to show a valid cause of action to confer Article III jurisdiction, federal courts could never entertain diversity cases where the existence of the asserted claim under state law was unclear. This is so because standing to sue must clearly exist before a federal court is permitted to reach the merits of a case. Of course, federal courts are often called upon to decide unsettled issues of state law. *See, e.g., Silver v. Mendel*, 894 F.2d 598, 606 (3d Cir.), *cert. denied*, 496 U.S. 926 (1990).

Therefore, I conclude that the applicable legal precedent requires that the question of whether the exposure-only plaintiffs have standing to bring this lawsuit in federal court does not depend on whether they have stated a valid cause of action under applicable tort law. The standing analysis does not end here, however. I must still determine whether, pursuant to federal precedent, the harm alleged by the exposure-only plaintiffs, namely exposure to asbestos, constitutes injury in fact which is fairly traceable to the defendants' conduct and is likely to be redressed by a favorable decision.

1. Injury in Fact

To satisfy the first requirement of standing, the exposure-only plaintiffs must demonstrate that they have suffered an injury in fact which is concrete and particularized, and actual or imminent rather than merely conjectural or hypothetical. *Lujan*, 112 S. Ct. at 2136. By this the Supreme Court means "that the injury must affect the plaintiff in a personal and individual way." *Lujan*, 112 S. Ct. at 2136 n.1. Put another way, "an interest need only be expressible in terms of the individuals's satisfactions or experiences; but such satisfaction or experiences need not be unique to the litigant." L.

Tribe, *American Constitutional Law* § 3-16, at 117 (2d ed. 1988) (emphasis omitted).

The severity of the injury is immaterial. The Supreme Court and the Court of Appeals for the Third Circuit have explained that "[t]hese injuries need not be large, an 'identifiable trifle' will suffice." *Public Interest Research Group, Inc. v. Powell Duffryn Terminals Inc.*, 913 F.2d 64, 71 (3d Cir. 1990) (quoting *United States v. Students Challenging Regulatory Agency Procedures*, 412 U.S. 669, 689 n.14 (1973)), *cert. denied*, 498 U.S. 1109 (1991). Indeed, other kinds of non-economic harm have been accepted as Article III injury in fact, including aesthetic harm and emotional distress. *Sierra Club v. Morton*, 405 US. 727, 734-41 (1972) (non-quantifiable aesthetic and environmental injuries); *Clayton v. White Hall School Dist.*, 875 F.2d 676, 679 (8th Cir. 1989) (emotional and psychological distress).

In *Duke Power*, the Supreme Court addressed the issue of whether exposure to a toxin is sufficient to confer Article III standing. In that case, the plaintiffs claimed that the future exposure to radiation from two nuclear power plants under construction constituted injury in fact entitling them to challenge the constitutionality of a statute which limited the liability for accidents at nuclear power plants. At the time the suit was brought, the plants were still under construction, and, therefore, plaintiffs had sustained no radiation-related diseases as a result of future emissions. The district court found "immediate" injury to the plaintiffs in "the production of small quantities of nonnatural radiation which would invade the air and water" and "a 'sharp increase' in the temperature of two lakes presently used for recreational purposes . . . ." *Duke Power*, 438 U.S. at 73-74. The Supreme Court agreed that *each* of these effects constituted injury in fact for purposes of Article III standing analysis:

> It is enough that several of the "immediate" adverse effects were found to harm appellees. Certainly the environmental and aesthetic consequences of the thermal pollution of the two lakes in the vicinity of the disputed power plants is the type of harmful effect which has been deemed adequate in prior cases to satisfy the "injury in fact" standard. *And* the emission of non-natural radiation into appellees environment would also seem a direct and present injury, given our generalized concern about exposure to radiation and the apprehension flowing from the uncertainty about the health and genetic consequences of even small emissions like those concededly emitted by nuclear power plants.

Id. at 73-74 (emphasis added, citations omitted).

The objectors point to language in *Duke Power* which appears to limit its holding on standing. At the beginning of the above-cited paragraph, the Supreme Court cautioned that it:

> need not determine whether all the putative injuries identified by the District Court, particularly those based on the possibility of a nuclear accident and the present apprehension generated by this future uncertainty, are sufficiently concrete to satisfy constitutional requirements. It is enough that several of the "immediate" adverse effects were found to harm appellees.

Id. at 73. However, the Court went on to select two of the injuries identified by the district court upon which to base its holding that the plaintiffs did indeed have standing: 1) the environmental and aesthetic consequences of the thermal pollution of the two lakes, and 2) the health and genetic consequences of exposure to small emissions of radiation. *Id.* at 73-74. Because the settling parties rely on the Court's holding only as to the second injury, I conclude that the Court's failure to rule on the concreteness of the other putative injuries is irrelevant.

Alternatively, the objectors argue that *Duke Power's* discussion of exposure to radiation as injury in fact is *dictum*. They claim that the Court held that the environmental and aesthetic consequences of thermal pollution constitute sufficient injury in fact while downplaying plaintiffs' future exposure to radiation. In support of this argument, the objectors point out that the first sentence in the Court's holding states that thermal pollution "[c]ertainly" constitutes injury in fact, while the second sentence states only that exposure to radiation "would also seem" to be injury in fact. *Id.* at 73-74.

This argument must also fail. The law of standing requires that a plaintiff allege only one injury in fact, not that all injuries alleged constitute injury in fact. Therefore, in its holding, the

Court chose the two injuries which, on their own, would be sufficient injury in fact for purposes of standing. The Court used stronger language when describing its holding as to the environmental and aesthetic injury simply because the law on that issue was clear. In other words, the Court was "certain" about its holding because environmental and aesthetic injury was "the type of harmful effect which has been deemed adequate in prior cases to satisfy the 'injury in fact' standard." *Id.* at 73-74 (citing *SCRAP*, 412 U.S. at 669 and *Sierra Club*, 405 U.S. at 734). The Court's holding as to the health and/or genetic consequences of exposure was not as easily gleaned from the case law at that time. However, the effect of the Court's ultimate decision that such harm was sufficient to confer Article III standing is no less binding.[7]

Finally, the objectors argue that *Duke Power* is an old case and that Supreme Court decisions concerning standing have become more stringent in the fifteen years since. The objectors claim that since its holding in *Duke Power*, the Supreme Court has added another element to the injury in fact analysis: that the harm be not only concrete and particularized, but also "actual or imminent, not conjectural or hypothetical." *Lujan*, 112 S. Ct. 2136; *Whitmore*, 495 U.S. at 155; *Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). However, the holding in *Duke Power* is in line with the requirement that the injury be actual or imminent. The Court expressly held that exposure to radiation constituted "direct and present injury[.]" *Duke Power*, 438 U.S. at 74. This it held in spite of the fact that the construction of the nuclear power plants was not yet completed. In this case, the exposure-only plaintiffs have

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[7] This Court previously recognized the dual holdings in *Duke Power*:

> *Cf. Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 73-4, 98 S. Ct. 2620, 2630-31, 57 L.Ed. 2d 595 (1978) (Finding that the proximity to a nuclear power plant and the "environmental and aesthetic consequences" of thermal lake pollution *and* exposure to "non-natural radiation" confer standing to assert a Fifth Amendment "taking" claim.)

Pearl v. Allied Corp., 566 F. Supp. 400, 403 (E.D. Pa. 1983) (emphasis added).

already been exposed to a toxin. Thus, even if *Duke Power* represents the most permissive end of the Supreme Court's spectrum of standing decisions, this case still falls within its holding.[8]

Moreover, the objectors' argument that *Duke Power* is no longer good law is odd in the face of the Supreme Court's recent decision in *Helling v. McKinney*, 61 U.S.L.W. 4648 (U.S. June 18, 1993). In *Helling*, the Supreme Court held that an allegation of intentional exposure of a prisoner to second-hand tobacco smoke, without present injury, states a valid claim for relief under the Eighth Amendment. *Helling* suggests that prisoners exposed to second-hand tobacco smoke may now have a valid cause of action. And, a necessary predicate to the Supreme Court's reaching the merits of the plaintiff's case in *Helling* was the implicit conclusion that mere exposure to second-hand smoke satisfied the injury in fact test of Article III.

Even before *Helling*, other courts had specifically held that exposure to a toxin constitutes injury in fact under Article III. *See, e.g., In re "Agent Orange" Prod. Liab. Litig. (Ivy v. Diamond Shamrock Chemicals Co.)*, 996 F.2d 1425 (2d Cir. 1993); *Ashton v. Pierce*, 541 F. Supp. 635, 637 (D.D.C. 1982), *aff'd*, 716 F.2d 56 and 723 F.2d 70 (D.C. Cir. 1983). Indeed, the Second Circuit's recent decision in the Agent Orange litigation is directly on point here. *Ivy*, 996 F.2d at 1433-35. *Ivy* turned on the effect of the settlement of a prior Agent Orange class action lawsuit in which the class had included "future claimants," that is, persons who had been exposed to Agent Orange but did not yet manifest any disease. Subsequently, several individuals whose disease manifested itself after the settlement filed new lawsuits. In seeking to avoid the binding effect of the class action settlement, they argued that, at the time of the class action, they lacked injury in

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[8] The objectors also seek to distinguish *Duke Power* as involving a challenge to government action, not a personal injury case. But the objectors cite no authority for their contention that standing is more relaxed for claims against the government than in private litigation. Furthermore, *Duke Power* itself held that there need be no subject-matter nexus between the right asserted and the injury in fact. *Duke Power*, 438 U.S. at 78-80.

fact for purposes of Article III standing because they manifested no disease as a result of their exposure to Agent Orange. They argued that, because of their lack of standing, their claims were not within the Article III jurisdiction of the court that approved the class action settlement and, therefore, could not have been settled. *Id.* at 1433-35.

The Second Circuit rejected that argument. It held that "some types of injury to the body occur prior to the appearance of any symptoms; thus, the manifestation of the injury may well occur after the injury itself," and rejected the argument that "'injury in fact' means injury that is manifest, diagnosable or compensable."[9] *Id.* at 1434 (citations omitted). Instead, the Second Circuit agreed that the plaintiffs' injury in fact occurred at the time of exposure. *Id.* at 1434 (citing *Duke Power*, 438 U.S. at 74).

In another case involving a settlement in an asbestos class action, objectors argued that those members of the class who had not yet manifested an asbestos-related illness did not allege Article III injury in fact. *In re Joint Eastern & Southern Dist. Asbestos Litig. (In re Johns-Manville Corp.)*, 129 B.R. 710, 834 (E. & S.D.N.Y. 1991). In response to these objections, the Honorable Jack B. Weinstein held:

> Since asbestos-related illnesses progress over time, the injury can be presumed to have occurred though the victim may not be aware of it.

Id. Judge Weinstein found that "[t]he question of whether compensable injury has occurred is not subject to doubt by any court[,]" because latent injury has been recognized throughout the

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[9] Throughout their memoranda, the objectors argue that "injury" in the context of asbestos cases must mean "disease" or "illness." This is not so for purposes of Article III standing. Nowhere in any of the standing cases is there such a limited definition of "injury in fact." The objectors may not, of their own accord, define injury and then claim that the exposure-only plaintiffs do not allege such an injury. Again, in asserting their Article III injury, the exposure-only plaintiffs rely on their actual exposure to asbestos as well as the resultant medical monitoring expenses, emotional harm, and increased risk of later developing a serious illness.

law (including in statutes of limitation decisions, in medical monitoring claims, in bankruptcy proceedings, and in insurance cases). After reviewing various areas of the law regarding the factual injury of asbestos exposure, Judge Weinstein reasoned:

> If persons exposed to asbestos fibers have a sufficient injury to warrant insurance coverage, they must have suffered a quantum of harm adequate to satisfy the constitutional case or controversy minimum injury-in-fact.
>
> * * * *
>
> Early status for Article III standing to be heard is particularly necessary in mass-tort-latent-disease cases. Often settlements and alternate dispute resolution techniques will be instituted even before litigation is threatened to provide protection against a looming storm cloud of future controversies. The courts need to be in a position to intervene as necessary.

Id. at 835-36.

Finally, in *Ashton*, the district court held that persons exposed to leadbased paint, but who did not yet manifest disease, had standing because their "alleged exposure to the risk of lead poisoning as a result of the continued presence of lead-based paint in [Washington,] D.C. public housing clearly constitutes a sufficient claim of injury in fact." *Ashton*, 541 F. Supp. at 637 (citing *Duke Power*, 438 U.S. at 74). In fact, many federal class action cases have involved a class that included persons who had been exposed to a toxin but manifested no disease. *See, e.g., In re Paoli R.R. Yard PCB Litig.*, 916 F.2d 829, 861 (3d Cir. 1990), *cert. denied*, 111 S. Ct. 1584 (1991) (holding that persons who had been exposed to PCBs could sue for medical monitoring expenses because "regardless of whether all plaintiffs alleged demonstrable physical injury, they all clearly alleged monetary injury"); *In re A.H. Robins Co.*, 880 F.2d 694, 880 F.2d 709 (4th Cir. 1989) (affirming district court's settlement of claims by class of persons with potential future injuries caused by use of Dalkon Shield contraceptive device).[10] Although in many of those cases there is

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[10] *See also Bowling v. Pfizer, Inc.*, 143 F.R.D. 141, 147-48 (S.D.

no express finding as to Article III standing, it is clear to me that the courts were satisfied as to their Article III jurisdiction because a finding of such jurisdiction is a necessary predicate to taking action on the merits.

Based upon the foregoing analysis, I conclude that exposure to a toxic substance constitutes sufficient injury in fact to give a plaintiff standing to sue in federal court.[11] The objectors do not

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Ohio 1992) (approving settlement of emotional distress claims on behalf of a 51,000-person class composed of individuals with "properly functioning ... heart valves" who feared that these valves might fracture in future), *appeal dismissed without op.*, 995 F.2d 1066 (6th Cir. 1993); *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 60-62 (S.D. Ohio 1991) (the court certified the class based on the class members' actual exposure to radiation and hazardous waste); *In re Fernald Litig.*, 1989 U.S. Dist. LEXIS 17764 (S.D. Ohio 1989) (approving settlement on behalf of class of persons exposed to radiation from uranium processing plant who had not yet manifested disease); *Pearl*, 566 F. Supp. at 401 (E.D. Pa. 1983) (denying motion to dismiss class action complaint of persons exposed to urea formaldehyde insulation, notwithstanding claim that class members suffered no detectible harm).

[11] The objectors rely heavily on the Supreme Court's most recent standing decision in *Lujan v. Defenders of Wildlife*, 112 S. Ct. 2130 (1992). In that case, environmental groups challenged a regulation of the Secretary of the Interior which required other agencies to confer with him under the Endangered Species Act ("ESA") only with respect to federally funded projects in the United States and on the high seas. The plaintiffs claimed that the Secretary erred as to the geographic scope of the ESA's consultation requirement.

The Court held that plaintiffs did not allege sufficient Article III injury in fact because they failed to show that one or more of their members would be directly affected apart from the members' special interest in the subject. Also, the Court explained "that the injury must affect the plaintiff in a personal and individual way." *Lujan*, 112 S. Ct. at 2136 n.1. In this case, the plaintiffs have already been personally exposed to asbestos. Their injury is not speculative as was the injury alleged in *Lujan*, it is actual. I find, therefore, that the Court's holding in *Lujan* supports a finding that the exposure-only plaintiffs have alleged sufficient injury in fact.

dispute, nor could they, that asbestos is a toxin. *See In re Joint Asbestos Lit.*, 129 B.R. at 739 ("The capacity of asbestos fibers to cause serious injuries is no longer disputed."). In this case, the class consists of persons who have been exposed to asbestos either occupationally or through the occupational exposure of a spouse or household member. Accordingly, by definition, each class member sues on the basis of *actual* exposure and not future exposure to asbestos. Without more, the exposure-only plaintiffs have alleged sufficient injury in fact.

Apart from the authority dealing with exposure to a toxin as Article III injury in fact, I conclude that the available medical data on the health consequences of exposure to asbestos also require a conclusion that the exposure-only plaintiffs have alleged a demonstrable physical injury which satisfies the Article III injury in fact requirement.

The Pennsylvania Supreme Court recently characterized the immediate consequences of exposure to asbestos as a "direct injury." *J.H. France Refractories Co. v. Allstate Ins. Co.*, 626 A.2d 502, 505-6 (Pa. 1993). The court summarized current medical evidence which shows that:

> asbestos fibers in the respiratory tract interact with the membranes of the cells lining the trachea and cause the release of enzymes and superoxides which either damage or kill individual cells. If sufficient cells are damaged, tissue (an accumulation of cells) is damaged or destroyed. This injury occurs within minutes after asbestos fibers enter the cells.

Id. The court went on to hold that, for purposes of triggering an insurer's duty to indemnify, "the medical evidence of discrete cellular injuries occurring upon exposure to asbestos justifies the conclusion that exposure to asbestos causes immediate 'bodily injury' ...", even if disease is not manifested until much later. *Id.* at 506. Judge Weinstein in *In re Joint Asbestos Lit.* agreed:

> Since asbestos-related illnesses progress over time, the injury can be presumed to have occurred though the victim may not be aware of it.

In re Joint Asbestos Lit., 129 B.R. at 834. Thus, to show injury in fact, the exposure-only plaintiffs are not relying on speculative

future harm, but on their *present* injuries resulting from exposure to asbestos.

In sum, the weight of recognized medical research on asbestos-related diseases shows that exposure to asbestos causes immediate cellular changes. And, only those who have been exposed to asbestos are members of the plaintiff class. They have been personally affected by defendants' conduct in a concrete and particular way whether or not they ever develop a serious medical condition. This is exactly the type of personal stake the Article III injury-in-fact requirement demands. Therefore, I conclude that the exposure-only plaintiffs have alleged Article III injury in fact.

2. Traceability

The second requirement of standing is that the plaintiff show that there is some causal connection between the injury and the conduct complained of, *i.e.*, the injury has to be fairly traceable to the challenged action of the defendants and not the result of the independent action of some third party. *Lujan*, 112 S. Ct. at 2136.

In their complaint, plaintiffs allege that their injuries are the proximate result of exposure to the CCR defendants' asbestos products. It is clear that they have been exposed to asbestos, and it is clear that the CCR defendants manufactured asbestos and asbestos-containing products.[12] Therefore, I conclude that plaintiffs have shown, for purposes of Article III standing, that their injuries are fairly traceable to the defendants' conduct.

3. Redressability

To satisfy the final requirement of standing, a federal plaintiff must show that his or her injury is likely to be redressed by a favorable decision. *Lujan*, 112 S. Ct. at 2136. Because of this requirement, "the form of relief sought is often critical in determining whether the plaintiff has standing." *Brown v. Fauver*, 819 F.2d 395, 400 (3d Cir. 1987).[13]

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[12] The objectors do not dispute that this requirement has been satisfied.

[13] The objectors offer no argument that the money damages sought in the complaint would not redress the injuries of the exposure-only plaintiffs.

The redressability requirement has been problematic only in cases requesting declaratory or injunctive relief. For example, in *Linda R.S. v. Richard D.*, 410 U.S. 614 (1973), the plaintiff claimed that the Texas policy of not prosecuting the fathers of illegitimate children for failure to pay child support was unconstitutionally discriminatory. The plaintiff, an unwed mother, asked the district court to issue an injunction forcing state officials to prosecute the father of her child. The Supreme Court, however, held that the plaintiff did not have Article III standing to bring the suit. The Court reasoned that an injunction commanding state prosecutions would not ensure that the mother would receive any additional support money. The Court explained that if the plaintiff "were granted the requested relief, it would result only in the jailing of the child's father. The prospect that prosection will ... result in payment of support can, at best, be termed only speculative." *Id.* at 618. In other words, the plaintiff lacked standing because her injury was not likely to be redressed by the relief she requested.

Similarly, in *Warth v. Seldin*, 422 U.S. 490 (1975), several plaintiffs challenged the constitutionality of a suburb's exclusionary zoning practices. They claimed that the zoning practices prevented construction of multifamily dwellings and low-income housing and, therefore, effectively excluded them from the neighborhood. The Supreme Court held that these plaintiffs lacked standing because they could not demonstrate that appropriate housing would be constructed without the exclusionary zoning ordinances. The Court felt that overturning the zoning ordinances would not guarantee that builders would choose to construct new housing in the area, or that low-income residents would be able to afford to live there. *Id.* at 505-07; *see also Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 45-46 (1976).

In this case, it is self-evident that the very conventional remedy sought by the plaintiffs — money damages — would do much to redress their injuries. Unlike claims for injunctive or declaratory relief, as in the above-cited cases, "[a] damage claim, by definition, presents a means to redress an injury." *Cardenas v.*

Smith, 733 F.2d 909, 914 (D.C. Cir. 1984). Therefore, I conclude that the exposure-only plaintiffs have shown that their injuries are likely to be redressed by the relief requested in their complaint.

4. Conclusion

The exposure-only plaintiffs have satisfied the three requirements of Article III standing. Beyond that, a reexamination of the policies served by the standing requirement convinces me of the propriety of this finding. *See* Memorandum, *supra* at 5-6. First, this is not a case where the courts are being "called upon to decide abstract questions of wide public significance. . . " *Warth*, 422 U.S. at 500. Here, the plaintiffs have particular, concrete and individual claims of injury. That there are many victims of asbestos does not change the individual and personal stake each plaintiff has in the outcome of this litigation. Judicial intervention is, therefore, appropriate and necessary.

Second, this case provides the type of factual setting which is necessary for judicial review to be effective. Because the claims of the exposure-only plaintiffs are based on their personal experiences and involve particularized concrete injuries, there is no risk of ruling on an ill-defined or abstract controversy.

Finally, the exposure-only plaintiffs have been directly affected by the CCR defendants' conduct. They are not merely concerned bystanders. Therefore, this case serves the Article III policy of reserving the federal courts for parties whose lives will be directly affected by the outcome of specific litigation.

Having reviewed the applicable case law and the Article III policies which have guided the courts in their decisions, it is clear to me that the claims of the exposure-only plaintiffs are precisely the type which confer standing to sue in federal court. I conclude, therefore, that the exposure-only plaintiffs have Article III standing to bring this lawsuit.

B. Diversity Jurisdiction - Amount in Controversy

The plaintiff class seeks to invoke the subject matter jurisdiction of this Court based on the federal diversity statute, 28 U.S.C. § 1332. That statute authorizes federal courts to exercise subject matter jurisdiction over actions "between citizens of different States" so long as "the matter in controversy exceeds the

sum or value of $50,000, exclusive of interest and costs." 28 U.S.C. § 1332. In class actions, each class member must on his or her own meet the amount in controversy requirement. *Zahn v. International Paper Co.*, 414 U.S. 291, 301 (1973).

For purposes of measuring the amount in controversy, "the sum claimed by the plaintiff controls if the claim is apparently made in good faith." *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). The case cannot be dismissed for failure to exceed the requisite amount in controversy unless it "appear[s] to a legal certainty that the claim is really for less than the jurisdictional amount . . . " *St. Paul Mercury Indem. Co.*, 303 U.S. at 289; *accord In re School Asbestos Litig.*, 921 F.2d 1310, 1315 (3d Cir. 1990) ("the court is required only to dismiss those class members whose claims appear to a 'legal certainty' to be less than the jurisdictional amount"). Only such a showing can overcome the presumption that the plaintiff has, in good faith, properly alleged the requisite amount. *See Horton v. Liberty Mut. Ins. Co.*, 367 U.S. 348, 353 (1961); 1 J. Moore, Moore's Federal Practice ¶ 0.92[1], at 829 & n.9 (2d ed. 1992); 14A C. Wright, A Miller & E. Cooper, Federal Practice and Procedure § 3702, at 54-56 (2d ed. 1985). Thus, although the plaintiff has the burden of proving the requisite amount in controversy, in practice, this burden "is not a heavy one.... [T]he plaintiff need only present allegations or proof that it is *not* clear to a legal certainly that [s/he] will not recover less than the jurisdictional amount." Moore, *supra*, at 831 (citations omitted, emphasis in original).

The amount in controversy is judged as of the time of filing the complaint, and subsequent events will defeat jurisdiction only if they show that the plaintiff lacked a good faith basis for claiming over $50,000 at the time the complaint was filed. *Id.* at 288-90; *see also Nationwide Mutual Fire Ins. Co. v. T & D Cottage Auto Parts and Service, Inc.*, 705 F.2d 685, 687 (3d Cir. 1983). Thus, "[t]he inability of plaintiff to recover an amount adequate to give the court jurisdiction does not show his [or her] bad faith or oust the [court's] jurisdiction. Nor does the fact that the complaint discloses the existence of a valid defense to the claim." *St. Paul Mercury Indem. Co.*, 303 U.S. at 289 (citations omitted); *accord Apicella v. Valley Forge Military Academy and Junior College*, 630 F. Supp. 20, 24 (E.D. Pa. 1985). Likewise, a verdict or settlement

for less than the jurisdictional amount does not undermine the court's jurisdiction. Moore, *supra*, at 834 (events "such as dismissal or compromise of claims ... do not affect jurisdiction").

In determining the amount in controversy, claims for punitive damages generally must be included in the computation. *See, e.g., Bell v. Preferred Life Assur. Soc'y*, 320 U.S. 238, 240 (1943). A claim for punitive damages may be "stricken from the amount in controversy" only if it is "'patently frivolous and without foundation' because such damages are unavailable as a matter of law." *Packard v. Provident National Bank*, 994 F.2d 1039, 1046 (3d Cir. 1993) (citation omitted).

The plaintiffs allege that jurisdiction is based upon diversity of citizenship and an amount in controversy for each member of the plaintiff class which exceeds $100,000. The objectors, on the other hand, argue that the exposure-only plaintiffs cannot in good faith allege damages in excess of the jurisdictional minimum.[14]

Applying the legal principles discussed above, courts in class action personal injury cases seeking unliquidated damages have uniformly held that it cannot be said to a "legal certainty" that any class member's claim is for less than the jurisdictional amount. For example, in the class action brought on behalf of asbestos personal injury plaintiffs against the Manville Settlement Trust, both Judge Weinstein and the Second Circuit rejected the argument that some members of the class did not meet the amount in controversy requirement, even though the class included those who had not yet manifested an asbestos-related condition, and even though the settlement imposed a cap on some claimants below the $50,000 level. *In re Joint Asbestos Litig.*, 129 B.R. at 793-94, 982 F.2d at 734. The class in that case consisted of "all beneficiaries of the [Manville] Trust who now have *or in the future may have* (a) any unliquidated claims for death or injury resulting from exposure to Manville asbestos...." 982 F.2d at 729 (emphasis added).

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[14] There is no dispute as to the diversity of citizenship of the named parties. Also, the objectors concede, and I agree, that the claims of those members of the plaintiff class who already manifest an asbestos-related condition satisfy the jurisdictional minimum of 28 U.S.C. § 1332.

Nevertheless, Judge Weinstein, relying on his own experience and on cases from other courts, took "judicial notice of the fact that the value of every claim in the complaint can in good faith be said to exceed $50,000 for the purposes of pleading." 129 B.R. at 793-94. Also, under the proposed stipulation of settlement — which was filed simultaneously with the complaint — the maximum possible award to certain kinds of claimants was $30,000. 982 F.2d at 730. With respect to the settlement cap, Judge Weinstein noted that "[w]hile any plaintiff is free to settle a claim for less than the amount sought in the complaint, the amount that controls for jurisdictional purposes is what the claimant in good faith pleads." 129 B.R. at 793. On appeal, the Second Circuit summarily rejected the challenge to these rulings, specifically agreeing that the settlement cap below $50,000 did not affect the Court's jurisdiction. 982 F.2d at 734.

The same conclusions have been reached in other class action product liability cases. The Second Circuit twice rejected an amount in controversy challenge in the Agent Orange litigation, even though (1) the class included "future claimants," *i.e.*, those who did not yet manifest a disease as a result of exposure to Agent Orange, and (2) the settlement provided no payment to many members of the class. *Ivy*, 996 F.2d at 1434; *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 145, 157-58, 163 (2d Cir. 1987). In the *Ivy* case, several class members who were classified as "future claimants" when the initial class action was settled in 1984 asserted that they had subsequently suffered injury as a result of their Agent Orange exposure and that they were not bound by the 1984 class action settlement. As with the standing issue, the *Ivy* plaintiffs argued that they could not be bound by the original settlement on the theory that their individual claims in 1984 (for not-yet manifested conditions) could not have satisfied the amount in controversy requirement. The Second Circuit disagreed, holding that it did not appear to a legal certainty that the claims of the plaintiff class, including the claims of the exposure-only plaintiffs, were really for less than the jurisdictional amount.

Likewise, in a case involving the drug DES, a district court certified a class of women who had been exposed to DES *in utero* but had not developed cancer. The court rejected a challenge to the jurisdictional amount requirement as follows:

> Plaintiffs' claimed damages are unliquidated and subject to a jury's evaluation of many subjective factors. I cannot now find to a legal certainty that the claim of any member of the plaintiff class is less than the jurisdictional amount.

Payton v. Abbott Labs, 83 F.R.D. 382, 395 (D. Mass. 1979), *vacated on other grounds*, 100 F.R.D. 336 (D. Mass 1983).

Similarly, in the Dalkon Shield litigation, the certified class included women "who had used the Dalkon Shield but had not yet manifested an injury" from that use.[15] *In re A.H. Robins Co.*, 88 B.R. 742, 745 (E.D. Va. 1988). Nevertheless, the Fourth Circuit rejected a challenge to the amount in controversy, noting that such personal injury claimants always sought an amount in excess of the jurisdictional amount and holding that it is "indisputable that it cannot be said to a legal 'certainty' that the jurisdictional amount herein was not satisfied." *In re A.H. Robins Co.*, 880 F.2d 709, 723-25 (4th Cir. 1989).

Finally, in the *Bowling* case discussed above, the court, in approving a class action settlement, rejected the argument that not all members of the plaintiff class met the $50,000 requirement, even though the heart valves implanted in several of the class members were, at the time of settlement, still functioning properly. The court stated that, "[a]though it is unlikely that the Plaintiffs would have made it to trial and then prevailed, had they done so, the Plaintiffs can assert in good faith that they would have received more than $50,000 each from a jury." *Bowling*, 143 F.R.D. at 167. This the court held even though, had the parties not settled, the claims of these plaintiffs would probably have been dismissed for failure to state a claim upon which relief could be granted.

The objectors argue that in spite of the holdings in the above-cited cases the exposure-only plaintiffs in this case have not met the amount in controversy requirement: (1) without a presently diagnosed asbestos-related condition, the exposure-only plaintiffs

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[15] Although this quotation directly referred to the bankruptcy claimants, the class in the class action was defined to include those claimants. *See In re A.H. Robins Co.*, 85 B.R. 373, 378 (E.D. Va. 1988); *see also In re A.H. Robins Co.*, 880 F.2d 709, 717 (4th Cir. 1989).

only have a cause of action for medical monitoring, if anything, and hence cannot recover more than $50,000, and (2) the proposed settlement itself shows that the amount in controversy does not exceed $50,000.[16]

I do not find it necessary to make a claim-by-claim analysis of the causes of action available to diversity plaintiffs in order to determine whether the plaintiffs have alleged the jurisdictional minimum. I conclude that it is enough that the kind of factual injuries alleged by the exposure-only plaintiffs — physical, monetary, and emotional injuries — plainly support a claim to more than $50,000. The *Manville Trust, Agent Orange, DES, Dalkon Shield*, and *Heart Valve* cases discussed above included persons who had been exposed to the hazardous substance or product but manifested no compensable disease or condition, and the courts nonetheless found that the plaintiffs all met the jurisdictional minimum. None of those courts found it necessary or appropriate to make a detailed examination of the causes of action available to such persons for purposes of the jurisdictional amount requirement.

Even those claims that would not be recognized under applicable law must still be counted for jurisdictional purposes. This is evident from the recent Third Circuit decision in *Angus v. Shiley, Inc.*, 989 F.2d 142 (3d Cir. 1993). In that case, the plaintiff alleged that she was suffering extreme anxiety and emotional distress as a result of learning that her implanted heart valve, which had been manufactured by the defendant, might fracture in a fashion that could cause death or serious injury. Her suit seeking compensatory damages for emotional distress and punitive damages was brought in Pennsylvania state court and removed by defendant to federal district court. The district judge

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[16] The objectors also attempt to distinguish many of the above-cited cases on the ground that, in those cases, "each of the *named plaintiffs* specifically alleged that they had sustained physical injury as a result of the defendant's conduct." Baron Brief at 37 (emphasis added). That argument fails because (1) the amount in controversy requirement applies to class members as well as to class representatives, *Zahn*, 414 U.S. at 301, and (2) in this case, the plaintiffs, including those with no manifested asbestos-related condition, do allege physical injury as a result of exposure to defendants' products — adverse cellular changes.

rejected plaintiff's motion to remand the case to state court and dismissed the case on the merits for failure to state a claim.[17]

On appeal, the plaintiff first contended that the district court had lacked diversity jurisdiction because her claims did not satisfy the amount in controversy requirement. The Third Circuit rejected this contention:

> Given that the complaint does not limit its request for damages to a precise monetary amount, the district court properly made an independent appraisal of the value of the claim,... and reasonably found that the actual amount in controversy exceeded $50,000 *for there can be no doubt that a reasonable jury likely could have valued Angus' losses at over $50,000.*

Id. at 146 (footnote omitted, emphasis added). Turning to the merits, the court upheld the dismissal of Angus' complaint for failure to state a claim, finding that Pennsylvania would not allow a cause of action for emotional distress under the circumstances. *Id.* at 147.

With its decision in *Angus*, the Third Circuit in essence held that claims for damages for emotional distress in product liability cases should be included in determining whether the jurisdictional amount is met, even when those claims ultimately must be dismissed for failure to state a valid claim.[18] *See also Bowling*, 143 F.R.D. at 167. The settling parties argue that the "lesson" from *Angus* was in fact required by the general rule that a court does not lose jurisdiction even when "the complaint discloses the

[17] The district judge termed its dismissal as a grant of summary judgment, but the Third Circuit ruled that its action was properly characterized as a dismissal. *Angus*, 989 F.2d at 146-47.

[18] *Angus* cannot be distinguished on the ground that it is a heart valve case and this is an asbestos case. The availability of damages for emotional distress obviously does not turn on the type of product involved. In fact, *Angus* expressly relied upon asbestos cases in deciding that the case should be dismissed.

existence of a valid defense to the claim." *St. Paul Mercury Indem. Co.*, 303 U.S. at 289.[19]

Alternatively, even if a claim-by-claim examination is necessary, the exposure-only plaintiffs have alleged a cognizable claim for medical monitoring and punitive damages. On this point most of the objectors concede, and I agree, that the claim for medical monitoring is not frivolous. Those objectors assert, however, that damages for medical monitoring cannot exceed approximately $500 per year, or approximately $10,000 per claimant.

But the plaintiffs also seek punitive damages. As noted above, claims for punitive damages must be counted in determining whether the jurisdictional amount has been satisfied unless they are "patently frivolous and without foundation." *Packard*, 994 F.2d at 1046. Conceding this, one of the objectors contends that punitive damages are not available at all when only medical monitoring damages can be sought, arguing that:

> there is *no* authority to suggest that the 'exposure only' plaintiffs' nominal claims for medical surveillance — without more — would support an award of punitive damages. Indeed, it appears that no court in any jurisdiction has ever upheld such an award. Accordingly, the punitive claims must be stricken from the amount in controversy.

Brief of the law firm of Baron & Budd ("Baron Brief") at 33 (emphasis in the original). The objectors suggest, in effect, that if no known or reported decision has upheld an award of punitive damages in such circumstances, I must conclude to a "legal certainty" that punitive damages could never be awarded. This, however, is not the law. The "legal certainty" test requires that such a claim be *unavailable* as a matter of law. *Packard*, 994 F.2d

[19] The claims in the present case are far stronger than the claims that were counted in computing the amount in controversy (but then dismissed) in *Angus*, given that the plaintiffs here allege that the asbestos products to which they were exposed were defective (Complaint at ¶ 46) and that they suffer physical injury from that exposure (Complaint at ¶ 41).

at 1046. In other words, controlling adverse precedent is required to show that a claim would certainly fail.

In any event, it is not uncommon for plaintiffs to join claims for punitive damages with claims for medical monitoring.[20] The potential substantiality of such claims is shown by *In re Fernald Litig.*, 1989 U.S. Dist. LEXIS 17764 (S.D. Ohio 1989). There the court approved a class action settlement of claims brought by owners of property adjacent to a nuclear facility and certain current and former employees of the facility. In evaluating the settlement, the court noted that, to facilitate settlement, it had conducted an advisory summary jury trial in which the non-binding verdict included "$1,000,000 for diminution of property values, $80,000,000 for a medical monitoring fund, and $55,000,000 for punitive damages." *Id.* at *4.

I distinguish *Linkous v. Medtronic, Inc.*, 1985 Westlaw 2602 (E.D. Pa. Sept. 4, 1985), upon which the objectors rely in support of their claim that the exposure-only plaintiffs cannot add punitive damage claims to medical monitoring claims in order to meet the jurisdictional minimum. In *Linkous*, the plaintiffs sought to certify a separate class for punitive damages claims. The court ruled that the class in that case failed to meet the requirements for certification. *Id.* at *8. In light of that ruling, the court also held that the amounts sought in punitive damages could not be used to establish that the plaintiffs in the remaining two classes met the jurisdictional amount requirement. *Id.* at *4, *7. Here, by contrast, the class itself includes plaintiffs' claims for both compensatory *and* punitive damages, which thus are both counted in deciding the jurisdictional amount issue.

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[20] *See, e.g., Day v. NLO, Inc.*, 814 F. Supp. 646 (S.D. Ohio 1993); *Cook v. Rockwell Int'l Corp.*, 755 F. Supp. 1468 (D. Colo. 1991); *Catasauqua Area School Dist. v. Raymark Indus., Inc.*, 662 F. Supp. 64 (E.D. Pa. 1987). Punitive damages have also been awarded in connection with other "exposure-only" claims. *See, e.g., Sterling v. Velsicol Chem. Corp.*, 855 F.2d 1188 (6th Cir. 1988) (lower court awarded $7.5 million in punitive damages along with substantial damages for fear of cancer).

The objectors also contend that punitive damages could not be awarded in a sufficient amount to exceed $50,000 when combined with the award for medical monitoring damages because "in Pennsylvania punitive damages must be reasonably related, and not disproportionate, to the amount of compensatory damages." Baron Brief at 31-32. The objector's argument mistakenly invokes the law of only one state, and also misstates that law. This is a nationwide class action in diversity jurisdiction, and the class members' claims are subject to the laws of the various states, not just Pennsylvania. In any event, this Court recently noted in applying Pennsylvania law that "punitive damages need not bear a reasonable relationship to compensatory damages." *Fine v. State Farm Fire & Cas. Co.*, 1993 U.S. Dist. LEXIS 7682, at *4 (E.D. Pa. June 11, 1993) (citing *Kirkbride v. Lisbon Contractors, Inc.*, 555 A.2d 800 (Pa. 1989)). And, in light of the recent Supreme Court decision of *TXO Production Corp. v. Alliance Resources Corp.*, 113 S. Ct. 2711 (1993), where a punitive award 526 times greater than the compensatory award was upheld, it cannot be argued with legal certainty that the Constitution imposes any requirement that punitive damages bear a reasonable relationship to compensatory damages. In short, there is no mathematically certain limit on the amount of punitive damages that might be awarded to the plaintiffs in this case.

In fact, there have been many large punitive damage awards in prior asbestos cases. Just recently, a majority of the Third Circuit, sitting en banc, approved a $1 million award of punitive damages on behalf of a single plaintiff against a former manufacturer of asbestos-containing insulation. *Dunn v. HOVIC*, 1993 U.S. App. LEXIS 19482 (3d Cir. July 27, 1993). In so doing, the court noted that:

> [a] multi-million dollar punitive damages award is not unique in products liability cases. See, e.g., *Glasscock v. Armstrong Cork Co.*, 946 F.2d 1085 (5th Cir. 1991) ($6.1 million in asbestos case); ... *Cathey v. Johns-Manville Sales Corp.*, 776 F.2d 1565 (6th Cir. 1985) ($1.5 million in asbestos case) ....

Id. at *37.[21]

The objectors rely heavily on *Packard v. Provident Nat'l Bank*, 994 F.2d 1039 (3d Cir. 1993), for their argument that the exposure-only plaintiffs cannot satisfy the jurisdictional minimum with their claims for medical monitoring and punitive damages. In *Packard*, the plaintiffs sought recovery of quantifiable "sweep fees" that defendant trustee banks had charged to trusts. Those liquidated sums were far less than $50,000 per class member, with the named plaintiff seeking recovery of only about $4,000 in such fees. *Id.* at 1046. This case, however, is much different. The complaint here seeks unliquidated damages that would be subject to a jury's subjective evaluation. It cannot be said with legal certainty that a jury would not award the exposure-only plaintiffs unliquidated, compensatory damages and punitive damages for medical monitoring in excess of the jurisdictional amount. In other words, *Packard* dealt only with the counting of punitive damages where the compensatory damages were liquidated at a level far less than $50,000. The *Packard* holding does not apply to cases like this one where the plaintiffs seek unliquidated compensatory damages.

Furthermore, because the level of liquidated compensatory damages in *Packard* was so low, the plaintiffs were necessarily trying to satisfy the jurisdictional amount almost entirely through their punitive damages claim. The court stated that "when it appears that [a punitive damages] claim comprises the bulk of the amount in controversy and may have been colorably asserted solely or primarily for the purpose of conferring jurisdiction, that claim should be given particularly close scrutiny." *Id.* at 1046. The court then examined whether plaintiffs in *Packard* could possibly state a viable claim for punitive damages under Pennsylvania law and concluded that that law foreclosed the award of punitive damages

[21] As examples of other substantial awards of punitive damages in asbestos litigation, *see Simpson v. Pittsburgh Corning Corp.*, 901 F.2d 277 (2d Cir.) ($2,300,000 in punitive damages), *cert. dismissed*, 497 U.S. 1057 (1990); *Johnson v. Celotex Corp.*, 899 F.2d 1281 (2d Cir.) ($3,000,000 in punitive damages), *cert. denied*, 498 U.S. 920 (1990); *Eagle-Picher Indus., Inc. v. Balbos*, 604 A.2d 445 (Md. 1992) ($150,000 in punitive damages).

against a trustee.[22] *See Id.* at 1047-49. It accordingly determined that there was a legal certainty that the plaintiffs' claims in that case could not satisfy the jurisdictional amount and it ordered that the action be dismissed. *Id.* at 1050.

It cannot be said in this case that punitive damages are unavailable as a matter of law. Nor can it be said with legal certainty that there is a strict mathematical limit on the amount of such damages that might be awarded. *See, e.g., Fine*, 1993 U.S. Dist. LEXIS 7682, at *3 n.2 (without commenting on the ultimate merits of plaintiffs' claim for punitive damages, the court noted that, from the face of the complaint, it was not patently frivolous and thus could be considered in assessing the amount in controversy).

In light of the foregoing I find that, even if only the claims for medical monitoring and punitive damages are considered, the exposure-only plaintiffs' claims exceed the jurisdictional minimum. In other words, I cannot find to a legal certainty that a jury could not award the exposure-only plaintiffs more than $50,000 in compensatory and punitive damages on their medical monitoring claims.

The objectors' second contention is that the terms of the proposed settlement show that the exposure-only plaintiffs do not meet the jurisdictional amount because they will receive no immediate monetary payment. However, the "amount of settlement is often less than the amount the plaintiff expects to receive *if* he or she prevails at trial." *Bowling*, 143 F.R.D. at 167. For that reason, as noted above, it is clear that a settlement for less than the jurisdictional amount does not undermine the court's jurisdiction. I find that this rule applies as well where the proposed settlement is filed at the same time as the complaint — as occurred in the *Manville* case. It also applies even if the settlement provides some class members with *no* immediate monetary relief — as was true in the *Agent Orange* and *Manville* cases.

[22] *Packard* also differs from this case in that only Pennsylvania law applied to the plaintiffs' cause of action. In this case, as mentioned above, the laws of the various states apply.

It is widely known that asbestos personal injury claimants invariably seek — and often obtain — damages well in excess of $50,000. Therefore, there is no basis on which to conclude that the damage calculation was inflated here to create federal jurisdiction. Because the "[p]laintiffs' claimed damages are unliquidated and subject to a jury's evaluation of many subjective factors," *Payton*, 83 F.R.D. at 395, I conclude that it is impossible to establish "to a legal certainty" that the claims of the exposure-only plaintiffs are for less than the jurisdictional amount. Therefore, I necessarily conclude that the plaintiff class has satisfied the amount in controversy requirements of 28 U.S.C. § 1332.

C. Collusion

Because of the "case or controversy" requirement in Article III, "federal courts will not entertain friendly suits, or those which are feigned or collusive in nature." *Flast*, 392 U.S. at 100. The Constitution demands a "honest and actual antagonistic assertion of rights." *United States v. Johnson*, 319 U.S. 302, 305 (1943) (quoting *Chicago & Grand Trunk R. Co. v. Wellman*, 143 U.S. 339, 345 (1892)). "[I]f two litigants commence a suit with the same goals in mind, no controversy exists to give the district court jurisdiction[.]" *Pennsylvania Ass'n for Retarded Children v. Pennsylvania*, 343 F. Supp. 279, 290 (E.D. Pa. 1972).

The objectors argue that this class action is collusive, or "friendly," because (1) the complaint and the proposed settlement were filed simultaneously, and (2) a provision of the proposed settlement provides that the CCR defendants will pay class counsel's fees.

Throughout the years, allegations of collusion have defeated a district court's jurisdiction in cases very different from this personal injury action for damages. In *Johnson*, for example, a landlord sought to invalidate the rent controls in the Emergency Price Control Act of 1942 by requesting that his tenant bring an action against him under the Act seeking treble damages for excessive rent. Notwithstanding the tenant's presence as the nominal plaintiff, the landlord controlled the suit and paid the tenant's attorney's fees. Because of the lack of adverse parties and the collusive nature of the suit, the Supreme Court held that action must be dismissed. *Johnson*, 319 U.S. at 305; *see also Moore v.*

Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 47 (1971) (both parties to the lawsuit jointly sought a judicial determination that an anti-busing statute was unconstitutional); *Wellman*, 143 U.S. at 344 (Court condemned "a friendly suit between the plaintiff and the defendant to test the constitutionality of [a particular piece of] legislation").

In *Teamsters Local 513 v. Wojcik*, 325 F. Supp. 989 (E.D. Pa. 1971), the district court dismissed for lack of subject matter jurisdiction a declaratory judgment action brought by a union against a union official who had been convicted of possessing narcotics. The purpose of the suit was to determine whether the official could still serve, despite a federal law disallowing anyone convicted of a violation of the narcotics laws from serving as an officer of a labor organization. Because both parties wished to preserve the official's position in the union unless the statute required otherwise, the court held that "there is no 'controversy' between them on that point because their interests are not adverse." *Id.* at 991.

The objectors argue that this suit is analogous to those cited above because the parties are no longer adverse as they settled their differences before filing the complaint. They argue that the simultaneous filing of the complaint and the proposed settlement leaves the Court with no choice but to find that this suit is "friendly." This is so, they argue, because to present a justiciable controversy, the parties must be genuinely adverse *when the suit is filed*.

On this point, the objectors cite to this Court's earlier decision in *Pennsylvania Ass'n for Retarded Children*, 343 F. Supp. at 290. In that case, an association of parents of retarded children brought a class action against the Commonwealth of Pennsylvania and thirteen individual school districts claiming that the exclusion of retarded children from the Pennsylvania public schools was unconstitutional. The plaintiffs added all other school districts in Pennsylvania as unnamed class defendants. The plaintiffs and representative defendants ultimately reached a settlement of the action and presented the proposal to the court for approval under Fed. R. Civ. P. 23. One unnamed school district objected, claiming that the court lacked jurisdiction over the class action because the

plaintiffs and the defendants were not sufficiently adversarial. Rejecting that argument, the court observed:

> Undoubtedly, if two litigants commence a suit with the same goals in mind, no controversy exists to give the district court jurisdiction as required by Article III, Sec. 2. But a different case arises when litigants *begin* a suit as adversaries and then at some later point decide to compromise the dispute. In such an instance, the court does not *ipso facto* lose jurisdiction over the matter for want of a controversy.

Id. at 290 (emphasis in original, citations omitted). In finding its jurisdiction intact, the court stated that "[t]he record in this case clearly shows that the Commonwealth did not collaborate with the plaintiffs in bringing or conducting this suit." *Id.* at 291.

The settling parties do not dispute that this class action was settled before the complaint was filed. They claim, however, that the CCR defendants, as asbestos manufacturers, and the plaintiffs, as asbestos victims, have diametrically opposed legal interests in this lawsuit just as they have throughout the twenty-year history of asbestos litigation. The settling parties claim, and the objectors do not dispute, that the negotiations leading to the proposed settlement were long, arduous, complex and arms-length. This type of controversy, the settling parties argue, is the opposite of the type banned from the federal courts for lack of a genuine dispute.

The recent decisions in *In re Joint Asbestos Litig.* support the argument that pre-filing negotiations do not evidence a "friendly" lawsuit. In that case, the complaint was filed on the same day as the proposed settlement. 982 F.2d at 728. Neither Judge Weinstein nor the Second Circuit saw any problem with the justiciability of the lawsuit resulting from that fact.[23] Also, other federal courts

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[23] At the August 23, 1993 hearing, the objectors attempted to distinguish *In re Joint Asbestos Litig.* by pointing out that Judge Weinstein was aware of the ongoing negotiations between the parties and that the simultaneous filing of the complaint and the settlement was done with his consent. However, a district judge cannot create subject matter jurisdiction if no case or controversy exists. If I can assume that Judge Weinstein "consented" to the filing of the complaint and the settlement, I can also assume he did so fully satisfied that the parties were not "friendly."

have held that the simultaneous filing of the complaint and the proposed settlement does not show a collusive suit or undermine the court's jurisdiction. *SEC v. Randolph*, 736 F.2d 525 (9th Cir. 1984); *Rodgers v. United States Steel Corp.*, 536 F.2d 1001 (3d Cir. 1976); *United States v. Allegheny-Ludlum Indus., Inc.*, 517 F.2d 826 (5th Cir. 1975); *United States v. TW Servs., Inc.*, 1993 U.S. Dist. LEXIS 7882 (N.D. Cal. Apr. 1, 1993); *Colorado Environmental Coalition v. Romer*, 796 F. Supp. 457, 458 (D. Colo. 1992); *West Virginia ex rel. Tompkins v. Coca-Cola Bottling Co.*, 1990 U.S. Dist. LEXIS 5304 (S.D. W. Va. Jan. 16, 1990); *United States v. Acton Corp.*, 131 F.R.D. 431 (D.N.J. 1990).[24]

In *SEC v. Randolph*, 564 F. Supp. 137 (N.D. Cal. 1983), *rev'd*, 736 F.2d 525 (9th Cir. 1984), the Securities and Exchange Commission ("SEC") filed a complaint against two alleged insider traders. Before actually filing the complaint in federal court, however, the SEC and the defendants had worked out a consent decree wherein the defendants, without conceding liability, agreed to disgorge the profits of their allegedly improper transactions. In accordance with the settlement agreement, on the same day the complaint was filed, proposed judgments incorporating the terms of the settlement agreement were also filed. The district court held that there existed no case or controversy because the parties had come to court only after they had agreed to a settlement and, thus,

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[24] The objectors attempt to distinguish these cases as involving the enforcement of public rights by a governmental agency (or a party standing in the shoes of a governmental agency) through proposal of a consent decree, and not the resolution of private claims for compensation through a settlement stipulation. The objectors point to language from two consent decree cases holding that the pre-filing settlements had not mooted the controversy because the settlements called for prospective relief in the form of injunctions. *Randolph*, 736 F.2d at 528 (citing *Swift & Co. v. United States*, 276 U.S. 311, 325-26 (1928) (dictum)). However, this case also calls for prospective relief in the form of a class action settlement. Such settlements require judicial approval, and once approved, take the form of consent judgments which, like injunctions, may be enforced by judicial proceedings. Therefore, I find these cases to be directly on point.

were no longer adverse at the time the complaint was filed. *Id.* at 144. The district court reasoned:

> Although cast in the form of a lawsuit, the proceedings in this case resemble a negotiated arrangement between private parties. The Court's first involvement with the case came when the parties presented it with a completed agreement and, in effect, asked the Court to rubber stamp it. The case was essentially over by the time the parties appeared in court. Under the circumstances, the Court questions whether there is a sufficient controversy here to justify invocation of the Court's jurisdiction under Article III of the Constitution. Even if there was once a controversy, it appears to have disappeared before the SEC filed its complaint. This is not a "collusive" lawsuit in the usual sense, because the parties' interests were certainly opposed when they began negotiating. But by the time they came to court, they were in agreement.

Id. The district court also stated that any settlement agreement between the SEC and the defendants could be enforced on normal contract principles and, thus, did not need court approval.

On appeal, the Ninth Circuit reversed the holding of the district court as to whether there existed an Article III case or controversy. *SEC v. Randolph*, 736 F.2d 525, 528 (9th Cir. 1984). The court held that because the consent decree called for prospective relief, the controversy was not mooted by the decree. The court also held that the district court "neglect[ed] the contingent nature of the proposed decree" when it held that the settlement agreement could stand alone. *Id.* Judicial approval of the consent decree was necessary to make it binding on the parties. *Id.* (citing *Carson v. American Brands, Inc.*, 450 U.S. 79, 87 (1981)). In support of its holding, the court stated that the use of the consent decree is efficacious because it "encourages informal resolution of disputes, thereby lessening the risks and costs of litigation." *Id.*

The facts in *Randolph* are similar to the facts of this case. The parties negotiated the settlement in that case before filing the complaint, but they needed court approval of the settlement for it to be binding as a judgment. Also, the consent decree called for prospective relief. The settlement agreement in this class action

also requires judicial approval pursuant to Fed. R. Civ. P. 23 to become binding on the parties, and it calls for both prospective relief, including ongoing adversary claims and relationships. Indeed, if not for the Rule 23 requirement, this case would have been mooted by the settlement agreement, and, as the objectors claim, there would be no case or controversy. However, a case does not become moot when, as in this case and *Randolph*, the parties reach a proposed settlement that is contingent on the approval of the court. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 371 n.10 (1982).

The objectors contend that there is no need to resort to the courts in this case to settle the claims of the named plaintiffs against the CCR defendants, *i.e.*, there is no need for judicial approval. They claim that the parties can do so by contract. Instead, the objectors argue, this suit was brought by cooperating interests for the sole purpose of affecting the rights of others. The objectors find collusion in the presentation of this lawsuit as a class action. The class action form, they claim, is used solely for the purpose of "rop[ing] millions of future asbestos claimants into [the] settlement[.]" Baron Brief at 42. The objectors argue that when class actions are settled prior to filing the complaint, they are necessarily brought solely to enforce a settlement on others.

The objectors [sic] argument on this point is without merit. As I see it, *all* class actions are brought to affect the rights of class members. "The purpose of a class action is to dispose of the claims of numerous parties in one proceeding." *King v. South Cent. Bell Tel. & Tel. Co.*, 790 F.2d 524, 528 (6th Cir. 1986); *see also EEOC v. American Tel. & Tel. Co.*, 556 F.2d 167, 173-74 (3d Cir. 1977), *cert. denied*, 438 U.S. 915 (1978). It follows that class action settlements are reached for the same reason — regardless of their timing. This is precisely why Rule 23 requires judicial scrutiny of class action settlements to determine whether they are fair to the class members. Presentation of this lawsuit as a class action, therefore, is not evidence of collusion.[25]

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[25] Of course, this Court will not approve the proposed settlement in this case if it is not fair to those persons the objectors purportedly seek to protect from the settlement, *i.e.*, the absent class members.

Looking to the nature of the controversy, and not the timing of the settlement agreement, it is clear that the plaintiffs and the CCR defendants are true adversaries. The proposed settlement simply represents a compromise of a genuine dispute. *See, e.g., In re Joint E. & S. Dist. Asbestos Litig.*, 982 F.2d 721, 739 (2d Cir. 1992), *modified in other respects*, 993 F.2d 7 (2d Cir. 1993) (asbestos claimants and defendant companies cannot be put in same subclass because their interests are "profoundly adverse to each other."). This Court's reasoning in *Pennsylvania Ass'n for Retarded Children* does not require a contrary ruling. Just as the plaintiffs and the Commonwealth of Pennsylvania began as adversaries in that case, so did the parties to this dispute. And, the settlements in both cases were reached only after long negotiations.

I conclude that this case is one involving genuinely adverse interests, but, because of the settlement, it lacks a dispute as to the remedy. I conclude, therefore, that the simultaneous filing of the complaint and the proposed settlement does not require a conclusion that the case is collusive or lacks a genuine dispute. A contrary rule would unwisely discourage pre-litigation negotiations and, by encouraging parties to wait an "appropriate" period of time after filing suit to file a proposed settlement, elevate form over substance.

The objectors [sic] second collusion argument is that the CCR defendants' agreement in the settlement to pay class counsel's fees is evidence that this lawsuit is "friendly." A review of class action cases, however, quickly reveals that such agreements are standard practice. *Malchman v. Davis*, 761 F.2d 893, 904 (2d Cir. 1985), *cert. denied*, 475 U.S. 1143 (1986); *Brown v. Pro Football, Inc.*, 1991 U.S. Dist. LEXIS 11854, at *9 (D.D.C. 1991); *Seagoing Uniform Corp. v. Texaco, Inc.*, 1989 U.S. Dist. LEXIS 12579, at *1 (S.D.N.Y. Oct. 23, 1989); *M. Berenson Co. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 825 (D. Mass. 1987); *Lurns v. Russell Corp.*, 604 F. Supp. 1335, 1345 (M.D. Ala. 1984); *Dekro v. Stern Bros. & Co.*, 571 F. Supp. 97, 101 (W.D. Mo. 1983). Such a provision was expressly approved by the court as "preferable and proper" in *In re A.H. Robins Co.*, 88 B.R. 755, 761 (E.D. Va. 1988), *aff'd*, 880 F.2d 709 (4th Cir. 1989). Because in those cases, as in this case, the *amount* of class

counsel's fees is to be fixed by the court, the fee agreements do not support an allegation of collusion.

In light of the foregoing, I conclude that this case is not a collusive or "friendly" suit.

D. Mootness

To satisfy the Article III case or controversy requirement, the parties must not only present a "honest and actual antagonistic assertion of rights," *Johnson*, 319 U.S. at 305, but the controversy must continue to exist at all stages of the federal proceedings. If events subsequent to the filing of the complaint resolve the dispute, the case should be dismissed as moot. *United States Parole Com. v. Geraghty*, 445 U.S. 388, 397 (1980). Generally, if the parties reach a settlement, the case is no longer justiciable as an Article III controversy. There is, however, an exception to this rule: a case does not become moot when the parties reach a *proposed* settlement that is contingent on the approval of the court. *Havens Realty Corp.*, 455 U.S. at 371 n.10; *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 465 n.3 (1978). And, as discussed above in the context of collusion, a class action settlement requires judicial approval pursuant to Rule 23 to be binding on the class members. Thus, the objectors' first argument, that the proposed settlement moots the case, is without merit.

The objectors also argue, however, that certain "side agreements" between class counsel and the CCR defendants effectively settle the claims of the named or representative plaintiffs. The objectors claim that because of these side agreements, the individual claims of the named plaintiffs and the entire class action are moot.

The objectors point to the existence of certain side agreements between the CCR defendants and various law firms who represent asbestos victims, including class counsel, as requiring a finding that this lawsuit is moot. *See* Plaintiffs' Proffer on Preliminary Evaluation of Fairness (example attached as part of Exhibit 3). The agreements are an attempt by the CCR defendants to provide an alternative dispute resolution ("ADR") procedure with respect to future asbestos claims in the event that the proposed settlement in this case fails to be approved and implemented. Under the terms of the side agreements, the signatory law firms will recommend to

their future asbestos clients that they defer filing suit against the CCR defendants until any asbestos-related disease is manifested. By deferring their claims, these clients would be accenting the criteria in the CCR defendants' ADR procedure which is virtually identical to the criteria in the proposed settlement. The clients are free to reject the recommendation of counsel, however, and sue the CCR defendants at any time. If the clients accept class counsel's recommendation, the statute of limitations is, by the terms of the agreement, tolled.

These side agreements superseded a prior agreement with one of the two law firms representing the plaintiff class. In the original agreement, if a future asbestos client did not wish to defer filing suit against the CCR defendants until an asbestos-related condition is manifested, the law firm could not represent him or her in a suit against the CCR defendants. However, in light of the recent opinion of the American Bar Association Standing Committee on Ethics and Professional Responsibility (Formal Opinion 93-371), the parties changed this agreement so as to avoid a possible violation of Model Rule of Professional Conduct 5.6(b) which prohibits restrictions on a lawyer's right to practice law.

The objectors claim that these side agreements require dismissal of this class action as moot under the recent Third Circuit case of *Lusardi v. Xerox Corp.*, 975 F.2d 964, 983 (3d Cir. 1992). In *Lusardi*, former employees brought an age discrimination class action case against their employer. After the case was filed and while no class certification motion was yet pending, the named plaintiffs fully and unconditionally settled their own claims against their employer. The claims of the rest of the putative class remained unsettled, and the named plaintiffs wished to reserve their right to act as class representatives. The Third Circuit held that because the named plaintiffs settled their claims before class certification, the class action was moot. *Id.* at 974. The court stated:

> In such a situation, "there is no plaintiff (either named or unnamed) who can assert a justiciable claim against any defendant and consequently there is no longer a 'case or controversy' within the meaning of Article III of the Constitution."

Id. (quoting *Zeidman v. J. Ray McDermott & Co.*, 651 F.2d 1030, 1041 (5th Cir. 1981)).

The objectors claim that, as in *Lusardi*, the named plaintiffs in this case have, through the existence of the side agreements, effectively settled their claims against the CCR defendants whether or not the proposed settlement is approved. Baron Brief at 45. This statement is factually untrue. The side agreements do not settle any claims with any asbestos victims. The side agreements only bind the signatory law firms, not their individual clients. Thus, in the event that the proposed settlement is not approved, the claims of the named plaintiffs are not settled. They, and all future asbestos claimants, remain free to sue the CCR defendants, and the various signatory law firms can still represent them in their suit.[26] Therefore, *Lusardi* is inapplicable here because, unlike the named plaintiffs in that case, the named plaintiffs in this class action have not definitively settled their claims.

The objectors further claim that the obvious intent of the parties was to have class counsel agree, on behalf of all their clients (*i.e.*, the named plaintiffs), to process claims using the same criteria and procedures as those detailed in the proposed settlement in the event that the settlement is not approved. However, I find that if the claims of the named plaintiffs are not actually settled by the side agreements because these individual plaintiffs themselves are not bound by the side agreements, then the "true" intention of the parties is not important. *Cf. Parks v. Pavkovic*, 753 F.2d 1397, 1404 (7th Cir.), *cert. denied*, 473 U.S. 906 (1985) (case does not become moot because one of the parties, while continuing to take all the steps that a live adversary would take to assert his rights, has secretly concluded that come what may he will give his opponent everything the opponent seeks). In other words, whether or not the named plaintiffs have, as the objectors state, committed themselves to the *Carlough* criteria and procedures, is irrelevant if their current claims are not yet settled and thus are not moot.

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[26] Even under the original agreement which restricted class counsel's ability to sue the CCR defendants, the individual asbestos claimants were still free to retain other counsel to represent them against the CCR defendants.

I conclude, therefore, that this class action is not moot.

III. CONCLUSION

Federal courts are under a continuing duty to satisfy themselves of their jurisdiction before proceeding to the merits of any case. Having done so here, I find that this Court has subject matter jurisdiction over this case. For the reasons discussed above, I find that this class action is a non-collusive justiciable case or controversy in which plaintiffs have standing pursuant to Article III of the Constitution. I also find that it cannot be concluded to a legal certainty that the amount in controversy for each class member does not exceed $50,000 in accordance with 28 U.S.C. § 1332. Accordingly, the objections to this Court's subject matter jurisdiction are overruled.

/s/ LOWELL A. REED, JR., J.

NOTICE OF RULE 23(b)(3) CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY

UNITED STATES DISTRICT COURT

Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Dear Potential Class Action Member.

You have been identified as a potential member of the class in the class action lawsuit, *Carlough* v. *Amchem Products, Inc. et al.*, C.A. No. 93-CV-0215 (E.D. Pa.). Enclosed is a complete individual notice packet regarding that class action and a proposed settlement of that lawsuit.

As a potential member of the class, you should read the entire packet thoroughly to ensure you know your rights with respect to the class action and proposed settlement.

In the complete individual notice packet, you will find:

- A Notice concerning the class action and an "Exclusion Request" form; and
- A Question and Answer sheet, which addresses basic questions about the class action and the proposed settlement.

Your rights in this class action include your right to exclude yourself from the class if you file an "Exclusion Request" with the Clerk of the Court, c/o P.O. Box 40745, Philadelphia, Pennsylvania 19107, postmarked no later than January 24, 1994. (An "Exclusion Request" form is attached to the complete "Notice of Rule 23(b)(3) Class Certification" included in the packet.) If you do not exclude yourself from the class, you will be bound by any judgment or settlement of the class action, and you may enter an appearance in the class action through your own counsel.

If you have questions, or need additional information regarding the class action lawsuit or proposed settlement, please do not hesitate to write or call the court-appointed counsel for the class at the addresses and phone numbers listed below:

Gene Locks, Esquire

Greitzer and Locks
22nd Floor
1500 Walnut Street
Philadelphia, PA 19102
(215) 893-0100
(215) 985-2960 (FAX)

Ronald L. Motley, Esquire

or

Joseph F. Rice, Esquire

Ness, Motley, Loadholt,
Richardson & Poole
151 Meeting Street, Suite 600
P.O. Box 1137
Charleston, South Carolina 29402
(800) 666-7503
(803) 571-7513 (FAX)

You may also obtain a complete copy of the settlement agreement in the *Carlough* class action by calling 1-800-847-2727.

Sincerely,

Michael E. Kunz
Clerk, United States District Court
Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 93-CV-0215

EDWARD J. CARLOUGH, et al.,
Plaintiffs,

v.

AMCHEM PRODUCTS, INC., et al.,
Defendants.

NOTICE OF RULE 23(b)(3) CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY, OF PROPOSED SETTLEMENT, AND OF HEARING ON PROPOSED SETTLEMENT

ATTENTION:

ALL PERSONS WHO HAVE WORKED WITH OR AROUND ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS (WHETHER OR NOT CURRENTLY SUFFERING FROM AN ASBESTOS-RELATED MEDICAL CONDITION)

THEIR SPOUSES, HOUSEHOLD AND FAMILY MEMBERS, AND LEGAL REPRESENTATIVES

THIS NOTICE ADDRESSES YOUR RIGHTS — PLEASE READ THIS ENTIRE NOTICE CAREFULLY.

THIS NOTICE IS DIRECTED TO:

(1) ALL PERSONS (OR THEIR LEGAL REPRESENTATIVES) WHO HAVE BEEN EXPOSED IN THE UNITED STATES OR ITS TERRITORIES (OR WHILE WORKING ABOARD U.S. MILITARY, MERCHANT, OR PASSENGER SHIPS), EITHER OCCUPATIONALLY OR THROUGH THE OCCUPATIONAL EXPOSURE OF A SPOUSE OR HOUSEHOLD MEMBER, TO ASBESTOS OR TO ASBESTOS-CONTAINING PRODUCTS FOR WHICH ONE OR MORE OF THE FOLLOWING COMPANIES MAY BEAR LEGAL LIABILITY AND WHO, AS OF JANUARY 15, 1993, RESIDED IN THE UNITED STATES OR ITS

TERRITORIES, AND WHO HAD NOT, AS OF JANUARY 15,1993, FILED A LAWSUIT FOR ASBESTOS-RELATED PERSONAL INJURY, OR DAMAGE, OR DEATH IN ANY STATE OR FEDERAL COURT AGAINST THE FOLLOWING COMPANIES (OR AGAINST ENTITIES FOR WHOSE ACTIONS OR OMISSIONS THOSE COMPANIES BEAR LEGAL LIABILITY):

AMCHEM PRODUCTS, INC.

A.P. GREEN INDUSTRIES, INC.

ARMSTRONG WORLD INDUSTRIES, INC.

CERTAINTEED CORP.

C.E. THURSTON AND SONS, INCORPORATED

DANA CORP.

FERODO AMERICA, INC.

FLEXITALLIC, INC.

GAF CORP.

I.U. NORTH AMERICA INC.

MAREMONT CORP.

ASBESTOS CLAIMS MANAGEMENT CORPORATION (formerly known as National Gypsum Company)

NATIONAL SERVICES INDUSTRIES, INC.

NOSROC CORP.

PFIZER INC.

QUIGLEY COMPANY, INC.

SHOOK & FLETCHER INSULATION CO.

T&N PLC

UNION CARBIDE CHEMICALS AND PLASTICS COMPANY INC. (formerly known as Union Carbide Corporation)

UNITED STATES GYPSUM COMPANY

AND

2) ALL SPOUSES, PARENTS, CHILDREN, AND OTHER RELATIVES (OR THEIR LEGAL REPRESENTATIVES) OF PERSONS DESCRIBED IN (1) ABOVE AND WHO HAD NOT, AS OF JANUARY 15, 1993, FILED A LAWSUIT FOR THE

ASBESTOS-RELATED PERSONAL INJURY, OR DAMAGE, OR DEATH OF A PERSON DESCRIBED IN (1) ABOVE IN ANY STATE OR FEDERAL COURT AGAINST ANY OF THE COMPANIES LISTED IN (1) ABOVE (OR AGAINST ENTITIES FOR WHOSE ACTIONS OR OMISSIONS THOSE COMPANIES BEAR LEGAL LIABILITY).

YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF A CLASS ACTION LAWSUIT PENDING IN THIS COURT, CIVIL ACTION NO. 93-CV-0215. THEREFORE, YOU ARE HEREBY GIVEN NOTICE, pursuant to an October 27, 1993 Order of the United States District Court for the Eastern District of Pennsylvania, and Rule 23(c)(2) and (e) of the Federal Rules of Civil Procedure, that:

(1) Certain individuals have brought a class action lawsuit for personal injury damages as a result of occupational exposure to asbestos. The class action lawsuit was filed against the 20 companies listed on the front page of this Notice, who are referred to throughout this Notice as the CCR Defendants. These 20 companies are all members of the Center For Claims Resolution ("CCR"), an organization that helps resolve asbestos claims for personal injury against its member companies. The individual Plaintiffs bringing the lawsuit seek damages both for themselves and for a class of other similarly situated persons. Under Rule 23(b)(3) of the Federal Rules of Civil Procedure, the Court has conditionally certified the class **solely** for purposes of a possible settlement of the lawsuit.

(2) The class consists of all persons to whom this Notice is directed, who are described in categories (1) and (2) on the front page of the Notice. If you, or a spouse or household member, worked with or around asbestos or asbestos-containing products, you may be a class member, and your rights may be affected by this class action. Accordingly, you should read this Notice carefully.

(3) You are a member of the class if you were exposed occupationally (or through the occupational exposure of a spouse or household member) to asbestos or asbestos-

containing products manufactured or supplied by one or more of the CCR Defendants (or for which one or more of the CCR Defendants may otherwise bear legal liability), and you had not filed a personal injury lawsuit based on that exposure as of January 15, 1993.

You are also a class member if you are a family member or a legal representative of such an occupationally exposed person and you have not filed a personal injury lawsuit based on that person's exposure to asbestos as of January 15, 1993.

"Occupational exposure" to asbestos generally means that an individual's job responsibility involved working with or around asbestos or asbestos-containing products. These exposures usually occurred in industrial settings or during construction activities. "Occupational exposure" to asbestos does not include "environmental exposure," such as that potentially experienced by office workers in buildings where asbestos products were present.

If you meet the requirements for class membership, you are a class member whether or not you are presently suffering from an asbestos-related medical condition.

(4) A proposed settlement has been agreed upon by the individual Plaintiffs (who have been designated by the Court as Class Representatives) and by the 20 CCR Defendants. The settlement sets up a system to compensate class members who meet certain asbestos exposure requirements if and when they develop certain asbestos-related medical conditions. Compensation will also be available in death cases. A hearing will be held by the Court in Courtroom 11A, United States Courthouse, Philadelphia, Pennsylvania, on February 22, 1994, to determine whether the proposed Settlement should be approved by the Court as fair, reasonable, and adequate. The hearing may also continue at other times and places to be announced.

(5) If you are a class member, **you will receive the benefits of, and be bound by, a settlement of this lawsuit,**

unless you act to exclude yourself from the class. Part II of this Notice explains how you may exclude yourself from the class. If you remain in the class, you have the right to enter an appearance in the class action through your own attorney.

This Notice is divided into parts. In Part I (pp. 5-13), the Notice explains certain facts about the class action lawsuit, such as the parties and the class and the claims asserted in the lawsuit; the certification of a settlement class by the Court; the appointment of Class Counsel and the right of class members to individual counsel; and the effect of the proposed settlement on the rights of class members. Part II (pp. 13-15) explains the right of each class member to exclude himself or herself from the class, how a class member may exclude himself or herself from the class, and the consequences of remaining a class member or choosing to exclude oneself from the class. (A form for a class member to use to exclude himself or herself from the class is included at the end of the Notice.) Part III (pp. 15-23) includes a brief summary of the basic provisions of the proposed settlement, while a more detailed summary of the settlement is attached to this Notice as an Appendix. Part IV (pp. 23-25) discusses the hearing scheduled by the Court on the proposed settlement, and how class members may participate in that hearing. Part V (pp. 25-26) tells how to obtain additional information or to inspect documents pertaining to the class action. Finally, Part VI (p. 26) is a final reminder to class members concerning important time limits relevant to the class action and proposed settlement.

If you believe that you may be a class member, you should read this Notice carefully.

I. THE CLASS ACTION LAWSUIT, THE CERTIFICATION OF A SETTLEMENT CLASS, COUNSEL FOR CLASS MEMBERS, AND THE PROPOSED SETTLEMENT

A. The Class Action Lawsuit

1. The Parties and the Class

The individual Plaintiffs who brought the lawsuit are Edward J. Carlough; Pavlos Kekrides and Nafssica Kekrides, his wife; Laverne Winbun, Executrix of the Estate of Joseph E. Winbun;

Ambrose Vogt, Jr. and Joanne Vogt, his wife; Carlos Raver and Dorothy M. Raver, his wife; John A. Baumgartner and Anna Marie Baumgartner, his wife; Timothy Murphy and Gay Murphy, his wife; Ty T. Annas; and Fred Angus Sylvester.

These individual Plaintiffs are all members of, and have been appointed by the Court as Class Representatives to represent, a class that has been conditionally certified for settlement purposes only. This class consists of the following persons:

(a) All persons (or their legal representatives) who have been exposed in the United States or its territories (or while working aboard U.S. military, merchant, or passenger ships), either occupationally or through the occupational exposure of a spouse or household member, to asbestos or to asbestos-containing products for which one or more of the Defendants may bear legal liability and who, as of January 15, 1993, resided in the United States or its territories, and who had not, as of January 15, 1993, filed a lawsuit for asbestos-related personal injury, or damage, or death in any state or federal court against the Defendant(s) (or against entities for whose actions or omissions the Defendant(s) bear legal liability).

(b) All spouses, parents, children, and other relatives (or their legal representatives) of the class members described in paragraph (a) above who had not, as of January 15, 1993, filed a lawsuit for the asbestos-related personal injury, or damage, or death of a class member described in paragraph (a) above in any state or federal court against the Defendant(s) (or against entities for whose actions or omissions the Defendant(s) bear legal liability).

The 20 CCR Defendants are the following companies:

Amchem Products, Inc.
A.P. Green Industries, Inc.
Armstrong World Industries, Inc.
CertainTeed Corp.
C.E. Thurston and Sons, Incorporated
Dana Corp.
Ferodo America, Inc.
Flexitallic, Inc.
GAF Corp.
I.U. North America, Inc.
Maremont Corp.

Asbestos Claims Management Corporation (formerly known as National Gypsum Company)

National Services Industries, Inc.
Nosroc Corp.
Pfizer Inc.
Quigley Company, Inc.
Shook & Fletcher Insulation Co.
T&N plc
Union Carbide Chemicals and Plastics Company Inc. (formerly known as Union Carbide Corporation)
United States Gypsum Company

Examples of the types of products which the 20 CCR Defendants manufactured or supplied (or for which they may otherwise bear legal liability), and which, at various times, contained (or may have contained) asbestos, include, **but are not limited to**, the following types of products:

- acoustical products, including spray and tile
- adhesives and cements
- asbestos blankets
- asbestos cloth or textiles
- asbestos fiber or pellets (raw or processed)
- asbestos linings
- asbestos paint
- asbestos paper
- asbestos protective clothing
- asbestos rope, braided tubing and wick
- asbestos-containing sprays
- asbestos tape or thread
- asphalt products, including tile and sundries
- automotive, truck, off-highway vehicular, and marine products (brake linings, pads and shoes, brake blocks, clutch materials, transmission components, gasket materials, shock absorbers)
- ceiling panels, tiles, and related sundries
- cement products (cement or mortar, board, flooring, panels, pipe, flat and corrugated sheet, siding, shingles, stucco)

- ceramic or paint fillers
- commercial and industrial machines or components (brake linings, clutch facings, thermal insulation, transmission components, gaskets)
- detacktifying/demolding agents
- drywall joint treatment products (joint compound, joint cement, joint treatment, joint sealant, caulking compounds)
- fireproofing products
- gaskets, sheet packing, and molded products
- mastics, and coating and sealing-products
- millboard, rollboard, and mineral wool board
- phenolic or plastic resins
- plaster and plaster products
- plumbing joint sealant
- refractory products, such as clays, cements, shapes and block (used to build, insulate, or seal structures subjected to high heat such as boilers, furnaces and kilns)
- resilient floor covering products (tile, sheet, backing, and sundries)
- roofing products (cements, coatings, felts, deckings, flashings, paints, shingles)
- spackling compound
- thermal insulation products (pipe insulation, pipe wrap, block insulation, cement, spray, and sundries)

Examples of occupations in which workers, at various times, potentially worked with or around the asbestos or asbestos-containing products listed above include, **but are not limited to,** the following occupations:

- asbestos mine or mill worker
- asbestos products plantworker
- automotive, truck, off-highway vehicular, marine and industrial component worker (parts manufacturing and fabrication, mechanic, [illegible]installer)
- boilermaker
- chemical, atomic, paint, or ceramic products worker
- construction worker (including bricklayer, carpenter, drywall installer or taper, flooring installer,

electrician, laborer, painter, plasterer, plumber, roofer)
- construction demolition and waste worker
- firefighter
- HVAC (heating, ventilation, air conditioning) worker
- insulator
- iron, steel, or metal worker
- longshoreman, seaman, or deck hand
- machinist
- maintenance, custodial, or janitorial worker
- oil field worker
- pipefitter
- pipe layer
- powerhouse worker
- railroad worker
- refinery worker
- roofer
- rubber or tire worker
- sheetmetal worker
- shipyard worker (all trades)
- smelter or foundry worker
- steamfitter
- warehouse worker

THESE LISTS PROVIDE EXAMPLES ONLY, AND MAY NOT LIST EVERY TYPE OF ASBESTOS-CONTAINING PRODUCT OR OCCUPATION INVOLVING POTENTIAL EXPOSURE TO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS MANUFACTURED OR SUPPLIED BY ONE OR MORE OF THE 20 CCR DEFENDANTS (OR FOR WHICH ONE OR MORE OF THE CCR DEFENDANTS MAY OTHERWISE BEAR LEGAL LIABILITY).

MOST EXPOSURES TO ASBESTOS, HOWEVER, OCCURRED MANY YEARS AGO.

2. The Claims

In the lawsuit, the individual Plaintiffs seek for themselves, and for the class of persons in similar situations, compensatory and punitive damages from the 20 CCR Defendants based on exposure to asbestos or asbestos-containing products manufactured or

supplied by one or more of the CCR Defendants (or for which one or more of the CCR Defendants may otherwise bear legal liability). In general, the legal theories upon which the individual Plaintiffs claim that one or more of the CCR Defendants are liable include negligence, strict products liability, breach of warranty, negligent infliction of emotional distress, enhanced risk of injury, medical monitoring to determine the existence of injury, and conspiracy. Each of the CCR Defendants deny any wrongdoing or liability, and also assert several defenses. The Court has not ruled on the merits of any of these claims or defenses.

B. The Certification of a Settlement Class

On January 29, 1993, the Court conditionally certified the class **solely** for purposes of a possible settlement of this lawsuit. The CCR Defendants agreed to that conditional certification. The Court has not decided whether the lawsuit could go forward as a class action for any other purpose. If no settlement is approved by the Court, and the Court later decides that the class action cannot go forward as a class action for any other purpose, then the claims of the individual class members will not be resolved in this particular lawsuit, but may be pursued in other lawsuits.

C. Class Counsel and the Right to Individual Counsel

The Court has appointed the following Class Counsel to represent the class:

Gene Locks, Esquire

Greitzer and Locks
1500 Walnut Street
22nd Floor
Philadelphia, PA 19102
(215) 893-0100
(215) 985-2960 (FAX)

Ronald L. Motley, Esquire
or
Joseph F. Rice, Esquire

Ness, Motley, Loadholt,
Richardson & Poole
151 Meeting Street
Suite 600
P.O. Box 1137
Charleston, SC 29402
(800) 666-7503
(803) 577-7513 (FAX)

As a class member, you will be represented, at no cost to you, by these Class Counsel, who are acting on behalf of the class in this action. You may contact them at any time (at the addresses

and phone numbers listed above) with any questions you may have. If you wish to be represented by your own attorney, you may do so at your own expense. If you do not exclude yourself from the class in the manner described below in Part II of this Notice, that additional attorney may enter an appearance in this class action lawsuit by mailing a notice of appearance to the Clerk of Court at the address for the Clerk set forth below in Part IV of this Notice.

D. The Proposed Settlement

The Class Representatives, with the advice of the Class Counsel, have entered into a Settlement with the 20 CCR Defendants. The Settlement is a compromise of disputed claims and does not mean that the CCR Defendants engaged in the conduct alleged by the individual Plaintiffs. The terms of the Settlement are summarized briefly in Part III below, and in detail in the attached Appendix to this Notice. Copies of the full Settlement document (whose formal title is the "Stipulation of Settlement") may also be obtained by 1) calling the following toll-free phone number: 1-800-847-2727; or 2) contacting Class Counsel at the telephone numbers and addresses listed above.

The Class Representatives and the Class Counsel have concluded that this Settlement is in the best interests of the class members. In reaching this conclusion, the Class Representatives and Class Counsel have taken many factors into account, including (i) their belief that the procedures set forth in the Settlement provide a fair, flexible, speedy, cost-effective and assured method of compensating class members who have or who in the future will contract an asbestos-related medical condition (as defined in the Settlement); and (ii) the possibility that this class action would not be certified by the Court as a class action for any purpose other than settlement, which would mean that class members would have to bring individual lawsuits to recover from the CCR Defendants. They also considered that, under the current procedures for resolving asbestos claims in the tort system, (i) the large number of asbestos personal injury lawsuits has made it difficult for some courts to process the suits in a prompt, efficient, and fair manner; (ii) compensation to asbestos plaintiffs has in some instances been unfairly distributed, dependent more upon the trial docket and court procedures than upon the plaintiff's individual circumstances; (iii) plaintiffs and defendants continue to spend substantial amounts of

time and money on court proceedings; and iv) several major defendants have filed for bankruptcy, increasing costs and delays significantly, and creating financial pressures on the remaining defendants.

If the Settlement is approved by the Court, it will settle all claims for asbestos-related personal injury against the 20 CCR Defendants by all members of the class who do not exclude themselves from the class. Such claims will include, without limitation, any and all claims against these 20 CCR Defendants for 1) personal injury, damage, or death and all forms of mental or emotional harm; 2) loss of support, services, consortium, companionship, society, and other valuable services made by spouses, parents, children, or other relatives, whatever such claims are called, including, without limitation, wrongful death or survival actions; and 3) punitive, aggravated, or exemplary damages of any sort. Claims based on premises ownership and for vicarious liability (the liability of one corporation for another) are specifically included as claims resolved by the Settlement. **The Settlement expressly provides, however, that it is not intended to, and shall not affect, add to, or diminish the right of any class member to recover for asbestos-related personal injury pursuant to any workers' compensation or similar statutory provisions (such as the Longshore and Harbor Workers' Compensation Act or the Federal Employers' Liability Act (FELA)) for compensation by an employee against an employer. The rights of class members to bring suit against companies not involved in the Settlement are also not affected.**

Payments to class members under the Settlement during the first ten (10) years will likely be in excess of one billion dollars ($1,000,000,000), to as many as one hundred thousand (100,000) class members.

II. ELECTION BY CLASS MEMBERS

If you are a member of the class and wish to remain a class member, you need do nothing further at this time. If you elect to be excluded from the class, however, you must take action. The following two paragraphs explain the basic consequences of remaining in the class or excluding yourself, but you should also read the remainder of this Notice to understand fully the choices

and their consequences. If you desire, you may obtain a copy of the full Settlement document (the "Stipulation of Settlement") to read (see p. 11).

If you filed a lawsuit asserting an asbestos-related personal injury claim against one or more of the 20 CCR Defendants before January 15, 1993, you are not a member of the class. However, if you filed such a lawsuit after January 15, 1993, you are a member of the class. The filing of a lawsuit by you or on your behalf since January 15, 1993, is not considered a request for exclusion from the class. Accordingly, if you wish to exclude yourself from the class, you must follow the procedures specified below for exclusion from the class. If you do not follow those procedures, you will remain a class member, and the procedures set forth below will apply.

A. Consequences of Remaining in the Class

If you remain in the class and a Settlement is approved by the Court, you will get the benefit of that Settlement. For example, if the proposed Settlement is approved, you will be able to receive compensation, in accordance with the procedures of the Settlement, if you can demonstrate the occupational exposure to asbestos or asbestos-containing products required under the Settlement, and if you now have, or in the future contract an asbestos-related medical condition that is compensable under the Settlement. By remaining in the class, you will have accepted these procedures as the only means of resolving claims against one or more of the 20 CCR Defendants (and against entities for whose actions or omissions a CCR Defendant bears legal liability) for any asbestos-related personal injury or damage, and you will not be able to present those claims against these Defendants, and will be barred and forbidden by order of the Court from presenting them, in any other lawsuit.

If you want to remain in the class, you are not required to do anything at this time. Accordingly, you should **NOT** file the "Exclusion Request" discussed in the following paragraph and attached to the end of this Notice.

The Exclusion Request at the end of this Notice is only for those who wish to exclude themselves from the Class and the Settlement.

B. Consequences of Excluding Yourself from the Class and Method of Doing So

If you exclude yourself from the class, you will not receive the benefit of the proposed Settlement, and you will not be able to bring claims seeking compensation under the procedures of that Settlement. You may, however, pursue any such claims by filing your own lawsuit at your own expense through the usual court procedures. **IF YOU WANT TO BE EXCLUDED FROM THE CLASS, YOU MUST FILL OUT THE FORM CALLED "EXCLUSION REQUEST" ATTACHED AT THE END OF THIS NOTICE AND SEND IT TO THE ADDRESS GIVEN IN THAT FORM BY MAIL POSTMARKED NO LATER THAN JANUARY 24, 1994.** A separate request for exclusion must be completed and timely mailed for each person electing to be excluded from the class.

III. BRIEF DESCRIPTION OF THE SETTLEMENT

This is a brief summary of the basic provisions of the proposed Settlement. A more detailed summary of the Settlement is attached to this Notice as an Appendix. You should read that detailed summary and the full Settlement document itself (see p. 11) for a more complete description of the Settlement.

1. The Settlement provides that compensation will be paid to class members who worked with or around asbestos or asbestos-containing products manufactured or supplied by one or more of the 20 CCR Defendants (or by entities for whose actions or omissions a Defendant bears legal liability), and who satisfy the specific requirements in one of four medical categories. Compensation will also be available in death cases. The four medical categories, which each include certain particular requirements, are — 1) Mesothelioma; 2) Lung Cancer; 3) Other Cancer, *i.e.*, primary colon-rectal, laryngeal, esophageal, or stomach cancer; 4) Non-Malignant Conditions, *i.e.*, asbestosis or significant bilateral pleural thickening with a decrease in pulmonary (breathing) function. See pp. A-2 — A-3 below. In addition, as explained below, some class members may meet the medical requirements for compensation through identification as an "exceptional" medical claim by an independent medical panel.

Class members who do not meet these asbestos exposure and medical requirements will not receive compensation. For example, class members who have only chest x-ray changes associated with asbestos exposure but who do not meet the pulmonary function (breathing) test requirements of the Non-Malignant Conditions medical category will **not** be compensated, unless and until they meet those pulmonary function (breathing) test requirements or other medical requirements under the Settlement.

Similarly, class members whose claims were barred by the applicable statute of limitations as of January 15, 1993 (so that they could not recover damages in a lawsuit at that time), will also **not** receive compensation. (The CCR Defendants have agreed to toll (suspend) any other statute of limitations or similar timeliness rules for claims submitted for compensation under the Settlement.)

2. All claims must be submitted for processing to the Center For Claims Resolution (CCR), an organization designated to handle such claims. The 20 defendant companies are all members of the CCR. The claim form submitted to the CCR will require information about the exposed person's asbestos exposure history and medical condition. A class member may, at his or her own expense, employ his or her own, separately chosen attorney to assist in the filing of a claim. **(Class Counsel will represent an individual class member in filing a claim for compensation only if that class member separately retains them to do so.)** The Settlement limits in most circumstances the fees the attorney may charge to a certain percentage of the compensation ultimately paid to the class member.

3. The CCR will evaluate whether each claim meets the requirements for compensation. Disputes over whether a claim meets the asbestos exposure or medical requirements for compensation will be resolved by independent, neutral arbitrators or medical experts. In addition, class members who do not meet the particular requirements of a medical category, but who demonstrate through "comparably reliable" evidence that they have an asbestos-related medical condition that is "substantially comparable" to that of a class member who does meet the particular requirements of a compensable medical category, will qualify for compensation if their claim is identified as "exceptional" by an "Exceptional Medical Panel" composed of independent,

neutral medical experts. There are limits on how many "exceptional" claims the independent medical panel may select each year, and there is no appeal from the decision of the "Exceptional Medical Panel."

4. The Settlement sets a maximum number of claims in each medical category that may be compensated in each year; claims that qualify for compensation in a given year but which exceed these maximum numbers will have priority for payment in the next year. Accordingly, these maximum case flow numbers regulate only the timing of when claims will be paid, and do not limit the total number of claims that may qualify for payment. The maximum numbers may be adjusted upward, within limits, one time during the first ten years of the Settlement, and new maximum case flow numbers will be negotiated after the first ten years. In the first ten years that the Settlement is effective, the Settlement provides that approximately 100,000 claims will potentially be paid.

5. For each medical category, the Settlement sets a minimum and a maximum compensation value and a middle range of average compensation values. These compensation values range from $2,500 to $200,000. See pp. A-4 — A-5 below. Over the next ten years, it is anticipated that payments to class members will exceed $1 billion ($1,000,000,000).

6. Each class member whose claim qualifies for compensation will receive from the CCR a good faith offer to resolve his or her claim against the CCR Defendants, in most cases within several months after submitting the claim to the CCR. This offer will be based on the traditional factors taken into account in settling a case in court, and will fall between the minimum and maximum compensation values for the relevant medical category. The CCR will be legally bound to give offers to claimants in a given medical category that average an amount within the middle range of compensation values for that medical category. This means that some offers to class members by the CCR will equal or exceed this middle range of compensation values for each medical category, while some offers will be below this middle range. Alternatively, a class member may receive payment even more quickly (within 30 days after determination that the claim qualifies for compensation) by electing to receive the minimum compensation value for the relevant medical category. Finally, a

class member who has an unusually high claim for damages against one or more of the 20 CCR Defendants may apply for compensation to an independent, neutral "Extraordinary Claims Panel." There is no fixed limit on the amount of compensation that may be paid by that panel to an individual class member, although there are overall limits on the compensation that may be paid to class members by that panel. There are also limits on how many "extraordinary" claims the panel may select each year.

7. A class member with a claim that qualifies for compensation and who is dissatisfied with the settlement offer received from the CCR may also choose, following a mandatory settlement conference, to have the compensation amount resolved by binding arbitration or by a jury trial in court. Although the number of class members who may have their compensation determined in this manner in each year is limited, those class members who are unable to have their compensation determined in this manner in one year will have priority the next year. The issues to be determined in binding arbitration or a jury trial are limited. In particular, no compensation for increased risk of cancer or for punitive damages may be obtained, and numerous defenses may not be asserted. The Settlement places no limit, however, on the amount of any jury verdict or arbitration award in these proceedings. A class member who elects to follow these alternative procedures, and who receives a verdict or award in his or her favor, will receive up to 150% of the CCR's last settlement offer soon after the award or jury verdict is final, and the balance, if any, over five years.

8. Unlike many traditional settlements in asbestos cases — where a settling plaintiff with a non-malignant condition waives and releases all claims for any future malignant (cancer) condition — a class member who receives payment for a non-malignant condition may submit a new claim for any later developed malignant condition. Compensation already paid to a class member for a non-malignant condition will be taken into account, however, in determining settlement amounts for a malignant condition, and compensation is available for only one non-malignant and only one malignant condition.

9. By remaining in the class, class members have agreed to follow the procedures in the Settlement as the only means of

resolving claims for asbestos-related personal injury or damage against the 20 CCR Defendants (and against entities for whose actions or omissions the 20 Defendants bear legal liability). In addition, class members who receive compensation must sign what is called a "release," which is an individual settlement agreement releasing claims against the 20 CCR Defendants (and against entities for whose actions or omissions the 20 Defendants bear legal liability). In some circumstances, the Settlement itself or the individual release may result in the reduction of any jury verdict awarded to a class member from other companies that are not part of this Settlement.

10. The Settlement expressly provides that it is not intended to, and shall not affect, add to, or diminish the right of any class member to recover for asbestos-related injury under any workers' compensation or similar statutory provision for compensation by an employee against an employer.

11. Each of the 20 CCR Defendants must pay a fixed share of the compensation payments under the Settlement, and each Defendant is responsible only for its own share of these payments. If a Defendant does not pay its share, class members who have not yet received compensation may sue that Defendant either to enforce its obligations under the Settlement or under ordinary principles of tort law (as though the Settlement had never taken place). Similarly, class members who have received compensation for Non-malignant Conditions only would have these same options, but only with regard to subsequent claims for malignant conditions. The CCR Defendant would also have to give notice of its failure to pay its share to class members.

12. Any CCR Defendant may withdraw from the Settlement after ten years. The withdrawing Defendant would have to give notice of that withdrawal to class members. If a Defendant chooses to withdraw, the compensation values under the Settlement would be reduced by that Defendant's share. Class members who have not yet received either compensation or settlement offers could sue the withdrawing Defendant under ordinary principles of tort law (as though the Settlement had never taken place). In addition, class members who have received either compensation or settlement offers for Non-malignant Conditions only could sue the withdrawing Defendant under ordinary principles of tort law with

regard to later claims for malignant conditions. The Compensation Schedule under the Settlement will also be renegotiated, within certain limits, after ten years.

13. Class Counsel and a representative of the AFL-CIO will review the disposition of claims under the Settlement each year. As part of this review, Class Counsel and the AFL-CIO representative will be able to examine all books and records of the CCR related to the processing of claims under the Settlement.

14. The CCR Defendants will pay the costs of virtually all the procedures under the Settlement, such as the costs of the independent medical panels. These payments will not diminish the funds available to pay claimants under the Settlement.

15. Class Counsel will be entitled to reasonable attorneys' fees for their work on the Settlement. These fees will be determined by the Court and paid by the 20 CCR Defendants, and will not diminish the funds available for class members under the Settlement. As explained above, however, Class Counsel will only receive attorneys' fees for representing an individual class member who files a claim for compensation under the Settlement if Class Counsel are individually hired to represent that class member. In that circumstance, attorneys' fees must be paid by the claimant, although the Settlement limits, in most circumstances, the fees that may be charged.

16. The CCR Defendants will have 45 days after the end of the period for class members to exclude themselves from the class to withdraw from the Settlement because too many class members have excluded themselves from the class.

17. The CCR will begin processing and paying claims under the Settlement at the end of the period for class members to exclude themselves from the class. Operations under the Settlement will end, however, if the CCR Defendants withdraw from the Settlement because there are too many class members who exclude themselves from the class (see Paragraph 16 above), the Settlement is not approved by the Court, if certain insurance conditions are not satisfied, or if the Court's decision approving the Settlement is overturned by another court on appeal.

IV. COURT HEARING ON THE PROPOSED SETTLEMENT

1. The Scheduled Hearing

The Court will hold a hearing on the proposed Settlement in Courtroom 11A, United States Courthouse, Philadelphia, Pennsylvania, on February 22, 1994, to determine whether, as recommended by both the Class Representatives and Class Counsel, it should approve the Settlement as fair, reasonable, and adequate. That hearing may also continue at other times or places to be announced.

If the Court decides that the proposed Settlement is fair, reasonable and adequate, the Court will issue a Final Judgment and Order binding class members who have not excluded themselves from the class and the 20 CCR Defendants to the Settlement and the Court's Final Judgment and Order.

2. Objections to the Settlement

If you support the proposed Settlement, you do not need to appear at the hearing or take any other action. Class Counsel will appear at the hearing on behalf of the class.

If you object to the proposed Settlement, you may send those objections to the Court. Written objections must be filed with the Clerk of the Court by first class mail postmarked no later than February 8, 1994. The Clerk of the Court's address is as follows:

Michael E. Kunz,
Clerk, U.S. District Court
Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

If you also wish to object to the Settlement orally at the hearing (either on your own or through your own separately-hired counsel), you must send a letter stating your intention to appear at the hearing, along with your written objections to the Settlement, to the Clerk of the Court postmarked no later than February 8, 1994. It is, however, not necessary for you to make your objections orally for your objections to be considered by the Court.

V. ADDITIONAL INFORMATION

1. Questions

Any questions you have about the matters contained in this Notice should not be directed to the Court but should instead be directed to the Class Counsel or your own counsel (if any). You should be sure to call or write Class Counsel or your own counsel with any questions. You may also call the following toll-free number for a copy of the full settlement document: 1-800-847-2727. The names, addresses, telephone numbers, and telefax numbers of Class Counsel are as follows:

Gene Locks, Esquire

Greitzer and Locks
22nd Floor
1500 Walnut Street
Philadelphia, PA 19102
(215) 893-0100
(215) 985-2960 (fax)

Ronald L. Motley, Esquire
or
Joseph F. Rice, Esquire

Ness, Motley, Loadholt, Richardson & Poole
151 Meeting Street, Suite 600
P.O. Box 1137
Charleston, SC 29402
1-800-666-7503
(803) 577-7513 (fax)

2. Inspection of Documents

You (or your own attorney) may review additional materials filed in this lawsuit at the Clerk's Office, U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106, during reasonable business hours.

VI. REMINDER AS TO TIME LIMITS

IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS, YOU MUST COMPLETE THE EXCLUSION REQUEST ON THE FOLLOWING PAGE AND MAIL IT TO THE CLERK OF THE COURT, c/o P.O. Box 40745,

PHILADELPHIA, PA 19107, *BY FIRST CLASS MAIL POSTMARKED NO LATER THAN* January 24, 1994. You will remain a member of the class and be bound by a Settlement, if approved, unless you request in writing to be excluded.

If you wish to object to the proposed Settlement, you MUST send your written objections to the Clerk of the Court, U.S. District Court for the Eastern District of Pennsylvania, U.S. Courthouse, 601 Market Street, Philadelphia, Pennsylvania 19106, by first class mail postmarked no later than February 8, 1994. If you wish to make your objections orally at the hearing, you should also include your request to be heard orally at the hearing with your written objections. It is, however, not necessary for you to make your objections orally for your objections to be considered by the Court.

AGAIN, YOU NEED NOT TAKE ANY ACTION IF YOU WISH TO REMAIN IN THE CLASS AND RECEIVE THE BENEFITS OF THE PROPOSED SETTLEMENT.

Michael E. Kunz
Clerk, U.S. District Court
Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106

DATED: October 27, 1993

* * * *

EXCLUSION REQUEST

READ THE ATTACHED LEGAL NOTICE CAREFULLY BEFORE FILLING OUT THIS FORM

***If you want to exclude yourself from the Class*, you must fill in and return this form by first-class mail postmarked no later than January 24, 1994, to:**

Clerk of the Court
c/o P.O. Box 40745
Philadelphia, PA 19107

A separate request for exclusion should be completed and timely mailed for each person electing to be excluded from the class.

***IF YOU WISH TO REMAIN A MEMBER OF THE CLASS*, DO *NOT* FILL OUT AND MAIL THIS FORM.**

The undersigned ***does not*** want to remain a member of the class certified in the case of ***Carlough et al.*** v. ***Amchem Products, Inc., et al.***, No. 93-CV-0215, pending in the United States District Court for the Eastern District of Pennsylvania.

_____

(Signature)

_____

(Print name of person signing)

_____

_____

_____

(Print address of person signing)

_____

Date of Birth

_____

Social Security Number

Brief description of basis for class membership (that is, facts concerning class member's occupational exposure to asbestos):

_____

_____

_____

_____

* * * *

APPENDIX

1. General Description

In general, the Settlement provides that compensation will be paid to class members who have contracted or may in the future contract an asbestos-related medical condition and who worked with or around asbestos or asbestos-containing products manufactured or supplied by one or more of the 20 CCR Defendants (or by entities for whose actions or omissions one or more of the CCR Defendants bear legal liability). Compensation will also be available in death cases. All claims for compensation will be processed by the Center For Claims Resolution (CCR), an organization that has been designated to handle such claims. The 20 Defendants are members of the CCR.

2. The Basic Requirements for Compensation

To qualify for compensation, class members (or their attorneys) will have to submit (i) evidence that the class member had sufficient occupational exposure to asbestos or asbestos-containing products manufactured or supplied by one or more of the CCR Defendants (or by entities for whose actions or omissions one or more of the CCR Defendants bear legal liability); and (ii) medical evidence that the class member meets the requirements of a "compensable medical category," as defined in the Settlement. Stipulation, Part III, at p. 12. These requirements are described in more detail below.

In addition, class members whose claims were barred by the applicable statute of limitations or similar legal doctrines concerning the timeliness of claims as of January 15, 1993 (so that they could not recover damages in a lawsuit at that time) will be ineligible for compensation. (The CCR Defendants have waived any other statutes of limitations or similar timeliness rules for claims submitted for compensation under the Settlement.) Stipulation, Part VI, at p. 49.

NOT ALL MEMBERS OF THE CLASS WILL QUALIFY FOR COMPENSATION UNDER THE SETTLEMENT. THE OCCUPATIONAL ASBESTOS EXPOSURE AND MEDICAL REQUIREMENTS MUST BE MET FOR CLASS MEMBERS TO RECEIVE COMPENSATION. FOR EXAMPLE, CLASS MEMBERS WHO HAVE ONLY CHEST X-RAY CHANGES

THAT INDICATE PRIOR ASBESTOS EXPOSURE WILL NOT QUALIFY FOR COMPENSATION, UNLESS AND UNTIL THEY MEET PULMONARY FUNCTION (BREATHING) REQUIREMENTS OR OTHER MEDICAL REQUIREMENTS. SIMILARLY, PERSONS WITH LUNG CANCER WILL ONLY QUALIFY IF THEY ALSO MEET CERTAIN OTHER REQUIREMENTS, WHICH ARE SUMMARIZED BELOW.

3. The Evidence of Occupational Exposure Required

To meet the occupational asbestos exposure requirement, a class member must show exposure to asbestos or asbestos--containing products manufactured or supplied by one or more of the 20 CCR Defendants (or by entities for whose actions or omissions one or more of the CCR Defendants bear legal liability). The exposure must have occurred on a regular basis over some extended period of time in proximity to where the class member (or the occupationally exposed person upon whom the class member's claim is based) actually worked (or an equivalent exposure if exposure secondary to occupational exposure is claimed.) This is generally called the "frequency, regularity, and proximity" standard. If, however, a class member is able to show that a different standard would apply to a lawsuit by that class member for asbestos-related injury, then that different standard will govern. Stipulation, Part IV, at p. 19.

4. "Compensable Medical Categories" and the Requirements of Those Categories

There are four "compensable medical categories": (1) Mesothelioma, (2) Lung Cancer, (3) Other Cancer, and (4) Non-Malignant Conditions.

For Mesothelioma, there must be a diagnosis on the basis of a pathological examination of tissue of this rare tumor in the chest or abdominal cavity, and evidence of exposure to a Defendant's asbestos or asbestos-containing products at least ten (10) years prior to the manifestation of the tumor. Stipulation, Part V, at pp. 25-26.

For Lung Cancer, there must be a diagnosis of a cancer whose primary site is in the lung, evidence of exposure to a Defendant's asbestos or asbestos-containing products at least twelve (12) years prior to the manifestation of the tumor, and evidence of either 1)

asbestosis, as shown by tissue analysis or chest x-ray changes and pulmonary function (breathing) tests; 2) significant bilateral pleural thickening accompanied by diminished pulmonary (breathing) capacity; or 3) a combination of certain chest x-ray changes and a certain number of years (ranging from approximately 4 to 15 years) of working directly with or around asbestos or asbestos-containing products. Stipulation, Part V, at pp. 26-28.

For Other Cancer, there must be a diagnosis of a tumor whose primary site is in colon-rectum, larynx, esophagus, or stomach, evidence of exposure to a Defendant's asbestos or asbestos-containing products at least twelve (12) years prior to the manifestation of the tumor, and evidence of either 1) asbestosis, as shown by tissue analysis or chest x-ray changes and pulmonary function (breathing) tests; or 2) significant bilateral pleural thickening accompanied by diminished pulmonary (breathing) capacity. Stipulation, Part V, at p. 29.

For Non-Malignant Conditions, there must be either 1) a diagnosis of asbestosis, based on tissue analysis or chest x-ray changes and pulmonary function (breathing) tests; or 2) significant bilateral pleural thickening accompanied by diminished pulmonary (breathing) capacity; and, with either 1) or 2) evidence of exposure to asbestos or asbestos-containing products at least twelve (12) years prior to manifestation of the asbestosis or pleural thickening. Stipulation, Part V, at pp. 29-33.

5. "Exceptional" Medical Claims

Some class members may not be able to meet the particular requirements of a "compensable medical category" by providing the types of medical evidence specified in the Settlement, but may be able to present other "comparably reliable" evidence of an asbestos-related condition that is "substantially comparable" to that of a claimant satisfying the requirements of one of the four medical categories. These claimants may apply to an independent medical panel called the "Exceptional Medical Panel" to have the claim identified as an "exceptional" medical claim. If so identified, the claim will be deemed to have met the medical requirements for compensation under the Settlement. Stipulation, Part V, at pp. 43-47.

The "Exceptional Medical Panel" will identify "exceptional" medical claims at six month intervals. The number of "exceptional" medical claims that the panel may identify in each medical category in each six month period may not exceed the following percentages of the total number of claims paid under the Settlement in each category during the previous six months:

Mesothelioma	5%
Lung Cancer	20%
Other Cancer	20%
Non-Malignant Conditions	6%

Stipulation, Part V, at p. 47.

6. Procedures For Determining Whether Claims Qualify For Compensation

When a class member submits information to the CCR to establish that he or she meets the occupational asbestos exposure and medical requirements of the Settlement, the CCR will review that information, and as soon as possible (no longer than 90 days), will respond in one of three ways: (1) by agreeing that the claim qualifies for compensation; (2) by disagreeing that the claim qualifies for compensation; or (3) by advising that the information submitted is materially incomplete, and that no determination can reasonably be made without further information. If the CCR reasonably believes that it cannot determine whether a claim meets the requirements of a "compensable medical category," the CCR may, at its option and expense, require further reasonable, non-invasive and non-excessive medical examination or testing. Stipulation, Part III, at pp. 15-16.

Any dispute concerning whether a class member meets the occupational exposure requirements will be resolved in binding arbitration before by a single neutral arbitrator. Stipulation, Part IV, at p. 20.

Any dispute concerning whether a class member meets the medical requirements of a "compensable medical category" will be decided initially by a single member of an independent medical panel, with the option for further review by two additional medical panel members.

The decision of the majority of the three medical panel members shall finally determine the issue. Stipulation, Part V, at pp. 33-42.

7. Compensation Schedule

The Settlement establishes for each "compensable medical category" a minimum and a maximum value, and a "negotiated average value" range within that broader range, as follows (Stipulation, Exhibit B):

Compensable Medical Category	Minimum	Negotiated Average Value Range	Maximum
Mesothelioma	$20,000	$37,000-60,000	$200,000
Lung Cancer	10,000	19,000-30,000	86,000
Other Cancer	5,000	9,500-12,500	32,000
Non-Malignant Conditions	2,500	5,800-7,500	30,000

After each ten (10) year period that the Settlement operates, Class Counsel and the Defendants will negotiate any appropriate adjustment in this Compensation Schedule. Any upward adjustment to these values at that time may not exceed twenty percent (20%). Stipulation, Part VII, at pp. 51-52.

As explained below, this Compensation Schedule does not apply to "extraordinary" claims (which have no fixed maximum payment) or claims for which compensation is determined in court or by binding arbitration (for which the amount of compensation to be paid is not limited by the Settlement). Moreover, this Compensation Schedule reflects only payments that will be made to claimants by the 20 CCR Defendants.

8. Claims Payment Procedures

A. Case Flow

The Settlement establishes case flow maximums for each "compensable medical category" for each of the first ten years of the Settlement. These case flow maximums (which are set forth in

Exhibits A and A* to the Settlement) essentially provide for settlement of approximately 100,000 claims over the ten year period. The CCR will pay qualifying claims each year up to the case flow maximums. If the number of qualifying claims in any category in any year exceeds these case flow maximums, then such excess claims will have priority for payment in the next year. Stipulation, Part VIII, at p. 53.

If the total number of qualifying claims in a medical category in any successive five (5) year period exceeds the case flow maximum for that period for that medical category by more than ten percent (10%), the future case flow maximums for that medical category will be increased by ten percent (10%). Stipulation, Part VIII, at pp. 53-54.

After the first ten (10) years that the Settlement operates, Class Counsel and the CCR Defendants will negotiate case flow maximums for the next period. Stipulation, Part VIII, at pp. 54-55.

B. Compensation Payments

Each class member whose claim has been determined to qualify for compensation may elect (1) a simplified payment procedure, (2) an individualized payment procedure, or (3) submission of the claim for treatment as an "extraordinary" claim.

(1) Simplified Payment Proceed

Class members with qualifying claims may elect to receive prompt payment of the minimum amount of compensation payable for the "compensable medical category" in which the class member qualifies. Such payments will be made as soon as practicable, and, subject to the case flow maximums, within thirty (30) days after a decision that the claim qualifies for compensation and receipt of appropriate settlement papers by the CCR. Stipulation, Part VIII, at pp. 55-56.

(2) Individualized Payment Procedure

Class members with qualifying claims may alternatively elect the individualized payment procedure, under which the CCR will evaluate the claim based on factors that are traditionally taken into account in settling a case, such as the extent of the injury, the claimant's age, dependents, and similar factors. The CCR will make a good faith offer to the class member within the range of minimum and maximum values for the class member's "compensable medical category" set forth in the Compensation Schedule. Stipulation, Part VIII, at pp. 56-58.

If the offer is accepted, payment will be made as soon as practicable, and, subject to the case flow maximums, within thirty (30) days after receipt of appropriate settlement papers by the CCR. The average amount of money offered to class members in each "compensable medical category" in each six month period must fall within the negotiated average value range for that category. This means that the total amount of settlement dollars offered to class members electing individualized payment procedures in each "compensable medical category" in any six-month period must equal the amount that would result by multiplying the total number of such class members by a number within the negotiated average value range for that medical category. For example, the average offer to class members in the Mesothelioma category electing individualized payment procedures in any six month period must fall between $37,000 and $60,000. (See ¶ 7 above). This means that some offers by the CCR to class members will equal or exceed this middle (average) range of compensation values for each medical category, while some offers will be below this middle range. Stipulation, Part VIII, at pp. 58-59.

Claims will generally be paid in the order in which they were submitted to the CCR. If, however, the case flow maximums are exceeded in any given year, the order in which claims are paid may be altered to ensure that a disproportionate number of class members paid in that year are not represented by one plaintiffs' counsel or firm. Stipulation, Part VIII, at p. 59.

(3) "Extraordinary" Claim Procedure

A class member with a qualifying claim may also propose to have the claim treated as an "extraordinary" claim for which higher compensation may be paid. Proposals will be submitted to an independent three-person panel known as the "Extraordinary Claims Panel." The criteria for selection as an "extraordinary" claim, and for determination of the amount of compensation, will be a combination of age, number and age of dependents, relevant economic factors, an unusually high percentage of exposure to the products of one or more of the 20 CCR Defendants (or of entities for whose actions or omissions these Defendants bear legal liability), and other similar factors that would demonstrate a truly extraordinary claim for compensatory damages against one or more of the 20 CCR Defendants if the claim were litigated in court. Stipulation, Part IX, at pp. 61-63.

Each year, the "Extraordinary Claims Panel" will select these "extraordinary" claims; provided, however, that the maximum number of such claims in each medical category may not exceed the following percentages of the total number of claims paid by the CCR Defendants to that date in each category (minus the total number of claims previously selected as "extraordinary" claims):

Mesothelioma	3%
Lung Cancer	3%
Other Cancer	3%
Non-Malignant	1%

The panel will make offers for any amount they deem fit with no fixed maximum value for each claim; but the sum of such settlement offers for the "extraordinary" claims in all medical categories for each year may not exceed an amount equal to the maximum number of "extraordinary" claims that may be selected to that date in each category multiplied by the following average values for extraordinary claims in each medical category (minus any amounts previously paid to claimants with "extraordinary" claims):

Compensable Medical Category	Negotiated Average Value
Mesothelioma	300,000
Lung Cancer	125,000
Other Cancer	50,000
Non-Malignant Conditions	50,000

Stipulation, Part IX, at pp. 63-65 and Exhibit B.

If the class member accepts the offer, payment will be made as soon as practicable, and within thirty (30) days after receipt of appropriate settlement papers by the CCR. In addition, in certain cases of extreme hardship or other exigent circumstances, advance payments may be made with respect to claims proposed (but not yet selected) for "extraordinary" claim treatment. Stipulation, Part IX, at pp. 65-66.

"Extraordinary" claims will count against the case flow maximums in the relevant "compensable medical category." Stipulation, Part IX, at p. 64.

Claims not selected as "extraordinary" claims in one year may be resubmitted in a subsequent year. The class member may also, at any time, decide to follow either the simplified or individualized payment procedures. Stipulation, Part IX, at p. 65.

9. Payment of Additional Claims

If the total amount of settlement dollars paid to class members with qualifying claims in a given "compensable medical category" in a year is less than an amount equal to the maximum number of claims payable under the case flow maximums for that category multiplied by the maximum number in the average value range for that category, the difference shall be used, in any subsequent year or years, to pay claims that qualify for compensation in "compensable medical category" that exceed the case flow maximums. Additional mesothelioma claims shall be the first paid under this procedure. Stipulation, Part VIII, at p. 60.

10. Determination of Compensation in the Court System or Through Binding Arbitration

If a class member with a qualifying claim does not accept an offer made to him, the class member may have the dispute

concerning compensation resolved either in the court system or through binding arbitration. The class member must first participate in a mandatory settlement conference. The maximum number of claims in each medical category that may use these procedures in any given year may not exceed the following percentages of the total number of claims that qualified for payment and could be paid in that category during the previous year:

Compensable Medical Category	Percentage
Mesothelioma	2%
Lung Cancer	2%
Other Cancer	1%
Non-Malignant Conditions	0.5%

Class members who wish to use these procedures but who exceed this case flow maximum will be given priority to use the procedures the next year. Stipulation, Part X, at pp. 67-69; Amendment to the Stipulation of Settlement, at pp. 6-7.

Although class members shall generally proceed to the court system or to binding arbitration in the order in which they elect to do so, the Court may, upon application from Class Counsel, CCR Counsel, or a representative of the AFL-CIO, alter this principle of FIFO order to prevent a disproportionate number of class members in a medical category represented by one attorney or firm from proceeding to court or to binding arbitration in that year. Amendment, at pp. 6-7.

If the class member elects the court system, the class member may bring a lawsuit in any appropriate court. If the class member elects binding arbitration, a single, neutral arbitrator will decide the dispute. Stipulation, Part X, at p. 69.

The only issues to be resolved in any court or binding arbitration proceeding will be i) whether an asbestos-related disease or condition is present; ii) whether one or more of the CCR Defendants' products were a substantial contributing factor to those injuries; iii) the amount of compensatory damages, if any, to be awarded; and iv) where relevant, the CCR Defendants' share of compensatory damages. No compensation for risk of cancer and

no punitive damages may be obtained, and numerous defenses may not be asserted. Stipulation, Part X, at pp. 69-72.

The Settlement places no limit, however, on the amount of any jury verdict or arbitration award in these proceedings.

If the class member prevails and the verdict or award warrants, the class member will receive up to one-hundred and fifty percent (150%) of the CCR's last settlement offer soon after the jury verdict or arbitration award is final, and the remainder in equal installments over five years. Stipulation, Part X, at pp. 72-73.

11. Expedition of Claims in Special Circumstances

Where special circumstances exist (such as extreme financial hardship or imminent death), the CCR will make every reasonable effort to expedite processing of the claim. Stipulation, Part XI, at p. 74.

12. Right to Make Additional Claims or to Resubmit Claims

A class member who previously submitted a claim for a non-malignant condition may submit a new claim for a subsequently - diagnosed malignant condition at any time, regardless of whether the class member previously received compensation for the non-malignant condition. Any amount previously paid for a non-malignant condition will be taken into account in determining the settlement amount for the malignant condition. Compensation is available for only one non-malignant condition and only one malignant condition. Stipulation, Part XIV, at pp. 83-84.

Claims that are denied may also be resubmitted at any time if the class member dies, has new tissue or biopsy samples (pathological evidence), or receives a diagnosis of a malignant condition. Otherwise, claims that are denied may be resubmitted only if there is new evidence (other than new pathological evidence), and only after two years have expired. Stipulation, Part XIV, at p. 83.

13. Releases and Provisions Concerning Contribution and Indemnity

By remaining in the class, class members have agreed to follow the procedures in the Settlement as the exclusive means of resolving claims for asbestos-related personal injury or damage against one or more of the 20 CCR Defendants (and against entities

for whose actions or omissions a CCR Defendant bears legal liability). In addition, class members who receive compensation will be required to execute an appropriate written release of all claims against the 20 CCR Defendants (and against entities for whose actions or omissions the 20 Defendants bear legal liability). This release will not affect the class members' rights to bring suit against other companies not involved in the Settlement. Stipulation, Part II, at pp. 10-11, and Part XII, at pp. 75-80.

If a class member brings a lawsuit for asbestos-related injury against other companies and has not provided the 20 CCR Defendants with a release that fully protects the Defendants against claims for contribution or indemnity by the other companies, the class member must take certain steps designed to protect the CCR Defendants from such claims. These steps may include reducing any jury verdict that the class member receives against the other companies. Stipulation, Part XIII, at pp. 81-82.

14. No Joint and Several Liability

Compensation to class members will be funded in accordance with the terms of the Defendants' Sharing Agreement (which is attached to the Settlement as Exhibit C). Each Defendant will be liable only for its own share of the Defendants' obligations, and recourse for that payment will be limited to that Defendant. If any Defendant should fail to meet its financial obligations under the Settlement and the Sharing Agreement, class members who have not yet received compensation would have the option of 1) enforcing the Defendant's obligations under the Settlement; or 2) asserting full rights in the tort system against that Defendant. Similarly, class members who have received compensation for Non-malignant Conditions only would have these same options, but only with regard to subsequent claims for malignant conditions. The defaulting Defendant would also have to give notice of the default to class members. Stipulation, Part XVI, at pp. 86-87.

15. No Effect on Workers' Compensation or Similar Statutory Rights Against Employers

The Settlement is not intended to affect, add to, or diminish the rights of class members to recover for asbestos-related injury under state or federal workers' compensation or similar statutory provisions for compensation by an employee against an employer,

such as the Longshore and Harbor Workers' Compensation Act, and the Federal Employers' Liability Act (FELA). Accordingly, the Settlement will not affect any otherwise applicable provision of a workers' compensation or similar statutory provision that bars a class member from filing a tort suit against one or more of these 20 CCR Defendants. Stipulation, Part XV, at p. 85.

16. Attorneys' Fees

Class Counsel will be entitled to reasonable attorneys' fees to be determined and approved by the Court and paid by the 20 CCR Defendants. Funds for compensating class members under the Settlement will not be reduced by the amount of these fees. Stipulation, Part XIX, at p. 92.

Class members may engage their own attorneys at their own cost to advise them regarding the possibility of making a claim, to represent them in making a claim, or to resolve a dispute over a claim. (Class Counsel will not represent class members in making individual claims unless they are retained by individual class members to do so.) Class members may enter into such fee agreements with these attorneys as they consider appropriate, but the attorney will not be allowed to receive in legal fees more than twenty-five percent (25%) of the compensation paid to that claimant (and no more than twenty percent (20%) of any compensation paid to the claimant above the maximum values for non-extraordinary claims). These limitations do not apply, however, to representation to determine compensation in a court proceeding or in binding arbitration. Stipulation, Part XX, at p. 93.

17. Payment of Costs of Procedures Under the Stipulation

The costs of administering most procedures under the Settlement, including the resolution of disputes concerning qualification for compensation through medical panels or arbitration, will be paid by the 20 Defendants. If the compensation amount is determined in court or binding arbitration, however, each party (the class member and the CCR Defendants) will bear its own costs. Stipulation, Part XVIII, at p. 91.

18. Annual Audits by Class Counsel

Each year, the Class Counsel and a representative of the AFL-CIO will audit the disposition of claims. In each such annual audit,

the Class Counsel will have the right to examine all books and records maintained by the CCR relating to the processing of claims under the Settlement. The AFL-CIO representative will have the right to participate equally with Class Counsel in raising with the Court any issues arising out of the audit. Stipulation, Part XXIII, at p. 97; Amendment, at p. 8.

19. Right of Defendants to Withdraw if Excessive Opt-outs

The 20 CCR Defendants will have the unlimited right to withdraw jointly from the Settlement if an excessive number of class members, as determined in the sole discretion of the Board of Directors of the CCR, exclude themselves from the class. If the 20 CCR Defendants decide to exercise this withdrawal right, they must do so within forty-five (45) days after the close of the period during which class members can exclude themselves from the class. Stipulation, Part XXI, at p. 94.

20. Withdrawal Right of any Defendant After Ten Years

Each of the 20 CCR Defendants will have the right to withdraw from the Settlement after ten (10) years, and after giving notification of such withdrawal to class members. If any Defendant withdraws, the amounts in the Compensation Schedule would be reduced by that Defendant's share. A withdrawing Defendant would have no right to a refund of any amounts previously paid or offered to class members under the Settlement. Class members who have not received either compensation or settlement offers under the Settlement would then be able to assert full rights in the tort system against that Defendant. In addition, class members who have received either compensation or settlement offers for Non-malignant Conditions only could sue the withdrawing defendant under ordinary principles of tort law with regard to subsequent claims for malignant conditions. Stipulation, Part XXII, at pp. 95-96.

21. Operational Date

The CCR will begin processing and paying claims under the Settlement at the expiration of the period for class members to exclude themselves from the class. The CCR Defendants will stop processing and paying claims, however, if the CCR Defendants decide to withdraw from the Settlement due to excessive opt-outs, the Settlement is not approved by the Court, if certain insurance

conditions are not satisfied, or if the Court's decision approving the Settlement is overturned by another court on appeal. Stipulation, Part XXVII, at pp. 102-03.

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QUESTIONS AND ANSWERS ON THE CLASS ACTION LAWSUIT AND PROPOSED SETTLEMENT

NOTE: THESE QUESTIONS AND ANSWERS SHOULD BE READ ONLY IN CONNECTION WITH THE COMPLETE "NOTICE OF RULE 23(b)(3) CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY"

I. THE CLASS ACTION LAWSUIT AND CLASS MEMBERSHIP

- **WHAT IS A CLASS ACTION LAWSUIT?**

A class action lawsuit is a lawsuit brought by one or more people on behalf of a larger group that share common interests.

- **WHAT IS THIS CLASS ACTION LAWSUIT ABOUT?**

A class action lawsuit was filed against 20 companies who are all members of the Center For Claims Resolution, or CCR, an organization that helps resolve asbestos claims for personal injury against its members. The lawsuit was brought on behalf of individuals who worked with or around asbestos or asbestos-containing products manufactured or supplied by one or more of the 20 CCR companies (or for which one or more of the 20 CCR companies may otherwise bear legal liability), but who had not, as of January 15, 1993, filed a lawsuit for asbestos-related injuries against one or more of those companies. The precise requirements for class membership are discussed in more detail below.

- **WHAT IS THE STATUS OF THE LAWSUIT?**

The class action lawsuit is pending in the federal district court for the Eastern District of Pennsylvania, which is located in Philadelphia. The Court has conditionally certified the class solely for purposes of a possible settlement. The individual plaintiffs, who have been designated as class representatives, their counsel, who have been designated as Class Counsel, and the defendants, who are the 20 CCR companies, have agreed to a proposed settlement of the class action lawsuit. The Court will hold a

hearing in Courtroom 11A, United States Courthouse, Philadelphia, Pennsylvania, on February 22, 1994, to evaluate whether to approve the proposed settlement as fair, reasonable, and adequate.

- **WHO ARE THE 20 DEFENDANT COMPANIES?**

The 20 companies are:

Amchem Products, Inc.
A.P. Green Industries, Inc.
Armstrong World Industries, Inc.
Certain Teed Corp.
C.E. Thurston and Sons, Incorporated
Dana Corp.
Ferodo America, Inc.
Flexitallic, Inc.
GAF Corp.
I.U. North America, Inc.
Maremont Corp.
Asbestos Claims Management Corporation (formerly known as National Gypsum Company)
National Services Industries, Inc.
Nosroc Corp.
Pfizer Inc.
Quigley Company, Inc.
Shook & Fletcher Insulation Co.
T&N plc
Union Carbide Chemicals and Plastics Company Inc. (formerly known as Union Carbide Corporation)
United States Gypsum Company

- **WHO IS CONSIDERED A MEMBER OF THE CLASS?**

Members of the class fall into the following two categories:

A. All persons (or their legal representatives) who have been exposed occupationally, or through the occupational exposure of a spouse or a household member, to asbestos or asbestos-containing products for which one or more of the 20 defendant companies may bear legal liability, but who had not, as of January 15, 1993, filed a lawsuit for asbestos-related personal injuries against one or more of those companies. The occupational exposure to the asbestos or asbestos-containing products must have taken place while the

exposed worker was working in the United States or its territories, or while working on U.S. military, merchant or passenger ships. Class members must also have resided in the U.S. or its territories as of January 15, 1993.

B. Spouses, parents, children or other relatives (or their legal representatives) of an exposed person, who had not, as of January 15, 1993, filed a personal injury lawsuit based on the exposed person's asbestos exposure, are also class members.

If you meet these requirements, you are a class member, *whether or not you are presently suffering from an asbestos-related medical condition.* You will be included in the class unless you exclude yourself from the class. The procedures for excluding yourself from the class are discussed below.

- **WHAT IS MEANT BY "EXPOSED OCCUPATIONALLY, OR THROUGH THE OCCUPATIONAL EXPOSURE OF A SPOUSE OR HOUSEHOLD MEMBER, TO ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS"?**

This means that your job responsibility involved working with or around asbestos or asbestos-containing products, or that you had similar exposure through the occupational exposure to asbestos or asbestos-containing products of a spouse or household member. These exposures generally occurred in industrial settings or during construction activities. "Occupational exposure" to asbestos does not include "environmental exposure," such as that potentially experienced by office workers in buildings where asbestos products were present. Included in the complete "Notice of Rule 23(b) (3) Class Certification" (at pp. 6-8), which is included in the individual notice packet for class members, is a list of asbestos or asbestos-containing products and the occupations in which exposure to these products potentially occurred. The individual notice packet may be obtained by calling 1-800-847-2727.

- **AM I A CLASS MEMBER IF I FILED A LAWSUIT AGAINST ONE OR MORE OF THE 20 CCR COMPANIES BEFORE JANUARY 15, 1993?**

No. Only individuals who meet the other requirements for class membership, and who had not, as of January 15, 1993, filed a lawsuit for asbestos-related personal injury against one or more

of the 20 companies involved in the class action lawsuit are class members.

- **WHAT IF I FILED A LAWSUIT AGAINST ONE OR MORE OF THE 20 CCR COMPANIES AFTER JANUARY 15, 1993?**

If you meet the requirements for class membership, you are a class member. The filing of a lawsuit after January 15, 1993, will not be considered a request for exclusion from the class. Accordingly, if you wish to exclude yourself from the class you must file an "Exclusion Request" with the federal court no later than January 24, 1994. An "Exclusion Request" form may be obtained by calling 1-800-847-2727. An "Exclusion Request" form is also attached to the complete "Notice of Rule 23(b)(3) Class Certification" that is included in the individual notice packet for class members.

- **WHAT DO I HAVE TO DO TO BE CONSIDERED PART OF THE CLASS?**

Absolutely nothing. As long as you meet the class definition outlined above, you are automatically considered part of the class.

- **IF I REMAIN IN THE CLASS, CAN I ALSO FILE A SEPARATE LAWSUIT AGAINST ONE OR MORE OF THE 20 CCR COMPANIES THAT ARE INVOLVED IN THE CLASS ACTION LAWSUIT?**

No. By remaining in the class, you will have accepted this class action as the only means of resolving claims against one or more of the 20 CCR companies based on asbestos-related personal injury, and you will not be able to present these claims in any other lawsuit. The proposed settlement provides, however, that each year a limited number of class members with claims that qualify for compensation may have the amount of their compensation determined in a jury trial. This class action also does not affect your right to file a lawsuit for asbestos-related injury against companies not involved in this class action lawsuit.

- **CAN I DECIDE NOT TO BE PART OF THE CLASS?**

Yes. If you elect to be excluded from the class, you must file an "Exclusion Request" with the federal court no later than January

24, 1994. An exclusion request form may be obtained by calling 1-800-847-2727. An exclusion request form is also attached to the complete "Notice of Rule 23(b)(3) Class Certification" that is included in the individual notice packet for class members.

- **IF I DECIDE NOT TO PARTICIPATE IN THE CLASS, CAN I FILE A SEPARATE LAWSUIT AGAINST ANY OF THE 20 CCR COMPANIES INVOLVED IN THE CLASS ACTION LAWSUIT?**

Yes. If you exclude yourself from the class, you may pursue an individual lawsuit against any of these companies. However, if you exclude yourself, you will not get the benefits of a settlement of this class action.

- **WHO IS REPRESENTING THE CLASS?**

The plaintiffs are represented by three attorneys who have been appointed by the court to represent the class. They are:

Gene Locks, Esquire
Greitzer and Locks
1500 Walnut Street, 22nd Floor
Philadelphia, Pennsylvania 19102
(215) 893-0100
(215) 985-2960 (FAX)

Ronald L. Motley, Esquire
or
Joseph F. Rice, Esquire
Ness, Motley, Loadholt, Richardson & Poole
151 Meeting Street, Suite 600
P.O. Box 1137
Charleston, South Carolina 29402
(800) 666-7503
(803) 577-7513 (FAX)

- **WILL I BE CHARGED A FEE TO PARTICIPATE IN THE CLASS?**

No. As a class member, you will be represented by the Class Counsel, who are acting on behalf of the class at no expense to class members. Class Counsel will apply to the Court for reasonable attorneys' fees for their work on this class action and settlement. The Court will determine these fees. The fees will be

paid by the 20 CCR companies, and will not diminish the funds available for class members under the settlement.

- **CAN I HAVE MY OWN ATTORNEY FOR PURPOSES OF THE CLASS ACTION LAWSUIT?**

Yes. If you wish to be represented by your own attorney in the class action lawsuit, you may do so *at your own expense*. If you do not exclude yourself from the class, your attorney may enter an appearance in this class action lawsuit by mailing a notice of appearance to the Clerk of Court at:

Michael E. Kunz
Clerk, U.S. District Court
Eastern District of Pennsylvania
U.S. Courthouse
601 Market Street
Philadelphia, Pennsylvania 19106

As explained below, you may also be represented by your own attorney for purposes of filing a claim for compensation under the settlement.

II. THE PROPOSED SETTLEMENT

A. GENERAL INFORMATION

- **WHAT IS THE PROPOSED SETTLEMENT OF THE CLASS ACTION LAWSUIT?**

In general, the settlement proposal provides for compensation to be paid to class members who have contracted, or in the future contract, an asbestos-related medical condition and who worked with or around asbestos or asbestos-containing products manufactured or supplied by one or more of the 20 CCR defendant companies (or by entities for whose actions or omissions a CCR defendant bears legal liability). To qualify for compensation, class members must meet certain asbestos exposure and medical requirements. These requirements are described in Part II.B below of these questions and answers. Compensation is also available in death cases. The Center For Claims Resolution (CCR) will process the claims under the terms of the settlement.

A copy of the full settlement agreement may be obtained by calling 1-800-847-2727.

- **WHAT IS THE CENTER FOR CLAIMS RESOLUTION?**

The Center For Claims Resolution (CCR) is an organization that helps resolve personal injury asbestos claims against its member companies. The 20 defendant companies are all members of the Center For Claims Resolution. The CCR has also been designated to process claims for compensation under the settlement.

- **WHEN WILL THE SETTLEMENT BECOME EFFECTIVE?**

The settlement will not become effective until the U.S. District Court in Pennsylvania determines that the settlement is fair, reasonable, and adequate. The Court has scheduled a hearing on this issue in Courtroom 11A, United States Courthouse, Philadelphia, Pennsylvania, on February 22, 1994. The CCR will, however, begin processing claims for compensation under the terms of the settlement at the end of the time period for class members to exclude themselves from the class action.

- **WHAT WILL HAPPEN IF THE COURT DOES NOT APPROVE THE SETTLEMENT PROPOSAL?**

If no settlement is approved by the Court, and the Court later decides that the class action cannot go forward for any other purpose, then the claims of the individual class members will not be resolved in this class action lawsuit, but may be pursued in other lawsuits.

- **MAY I PARTICIPATE IN THE HEARING ON THE PROPOSED SETTLEMENT?**

Yes. If you support the settlement, you do not need to appear at the hearing or take any other action. Class counsel will appear at the hearing on behalf of the class. If, however, you wish to object to the settlement, you may voice your objections to the Court. Written objections must be filed with the Clerk of the Court at the address listed on page 3 postmarked no later than February 8, 1994. If you wish to object to the settlement orally at the hearing (either on your own or through your own separately-hired counsel), you must send a letter stating your intention to appear at the hearing, along with your written objections to the settlement, to the Clerk of the Court postmarked no later than February 8, 1994.

B. QUALIFICATIONS FOR COMPENSATION UNDER THE PROPOSED SETTLEMENT

- **IF THE PROPOSED SETTLEMENT IS APPROVED, HOW CAN I FILE A CLAIM FOR COMPENSATION?**

All claims must be submitted for processing to the CCR. Each claimant must fill out a form that provides information about the asbestos exposure history and medical condition upon which the claim is based. Claim forms may be obtained by contacting the CCR, 116-300 Village Boulevard, Princeton, New Jersey 08543-5319.

- **MAY I HAVE AN ATTORNEY HELP ME FILE A CLAIM?**

Yes. You may employ your own, separately retained, attorney to assist you. Class counsel will represent you in filing a claim only if you retain them to do so. In most circumstances, the amount that an attorney may charge for representing you in filing a claim is limited to between 20-25% of the amount of compensation that you receive.

- **WILL CLASS COUNSEL BE ABLE TO REPRESENT ME FOR PURPOSES OF FILING A CLAIM FOR COMPENSATION UNDER THE SETTLEMENT?**

Yes. Class Counsel will be able to represent an individual class member for purposes of filing a claim for compensation under the settlement if the class member contacts any of the Class Counsel and retains him for that separate representation.

- **DOES MEMBERSHIP IN THE CLASS AUTOMATICALLY QUALIFY ME FOR COMPENSATION?**

No. To receive compensation, class members must first satisfy 1) an asbestos exposure requirement; and 2) medical requirements in one of the four medical categories — mesothelioma, lung cancer, certain other cancers, and certain non-malignant conditions. (There is also a provision for selection of certain "exceptional" medical claims by an independent medical panel, as explained below.) The class member's claim for asbestos-

related personal injury must also not have been barred by the applicable statute of limitations as of January 15, 1993, the date that the class action was filed (so that the class member could not have received damages in a lawsuit as of that date). Compensation is also available in death cases.

- **HOW CAN I DETERMINE IF I MEET THE ASBESTOS EXPOSURE REQUIREMENTS?**

You must be able to show that you worked with or around asbestos or asbestos-containing products manufactured or supplied by at least one of the 20 CCR defendant companies (or by entities for whose actions or omissions a defendant company bears legal liability), and that that exposure occurred on a regular basis over some extended period of time. This is the same asbestos exposure requirement that most claimants would have to meet in a lawsuit against one of these defendant companies. In fact, if you can show that a different asbestos exposure requirement would apply in a lawsuit by you against one of these 20 companies, then that different requirement will apply under the settlement.

- **WHAT HAPPENS IF THE CCR DETERMINES THAT MY CLAIM DOES NOT MEET THE ASBESTOS EXPOSURE REQUIREMENTS FOR COMPENSATION?**

If the CCR decides that your claim does not satisfy the exposure requirements for compensation, you may challenge that decision. Any dispute concerning whether a claimant meets, the asbestos exposure requirements will be decided by a neutral arbitrator.

- **HOW CAN I DETERMINE IF I MEET THE MEDICAL REQUIREMENTS?**

You must meet the requirements in the settlement for one of four medical categories: (1) mesothelioma; (2) lung cancer; (3) other cancers (which includes colon-rectal, laryngeal, esophageal, or stomach cancer); or (4) non-malignant conditions (which includes asbestosis, or pleural thickening under certain circumstances). There are various medical requirements within each category. These include various pathological (tissue) analyses, chest x-rays readings, and/or specified pulmonary function

(breathing) test results. You will need to consult a doctor or review your medical records to see if you qualify.

- **WHAT HAPPENS IF THE CCR DETERMINES THAT MY CLAIM DOES NOT MEET THE MEDICAL REQUIREMENTS FOR COMPENSATION?**

If the CCR decides that your claim does not meet the medical requirements for compensation, you may challenge that decision. Any dispute concerning whether a claimant meets the medical requirements will be decided first by a single member of an independent medical panel, with the option for further review by two additional medical panel members. The decision of the majority of the panel will finally determine the issue.

- **IF I DO NOT SATISFY THE MEDICAL REQUIREMENTS, MAY I STILL RECEIVE COMPENSATION?**

Maybe. The settlement provides for identification of "exceptional" medical claims. Accordingly, some class members may not be able to meet the particular requirements of the medical categories described above by providing the types of medical evidence specified in the settlement, but may be able to present other "comparably reliable" evidence of a medical condition "substantially comparable" to one of the medical categories. These claimants may apply to an independent medical panel to have the claim identified as "exceptional." There are limits on how many "exceptional" claims the independent medical panel may select each year. Any claim that the panel identifies as an "exceptional" medical claim shall be considered to meet the medical requirements for compensation under the settlement. There is no appeal from a decision of this panel, although a claimant may reapply to the panel in certain circumstances.

- **WHAT IF I DO NOT MEET ANY OF THE MEDICAL REQUIREMENTS?**

Unless the independent medical panel considers your case "exceptional," you will not receive compensation unless and until you meet the particular requirements of one of the compensable medical categories. For example, if you have chest x-ray changes associated with asbestos exposure but do not meet the pulmonary

function (breathing) test requirements of the non-malignant conditions category, you will not receive compensation unless and until you meet those requirements or other medical requirements under the settlement.

- **WHEN CAN I SUBMIT MY CLAIM?**

You may submit a claim at any time because there are no filing limits or deadlines. The CCR will begin to process claims at the close of the period for class members to exclude themselves from the class. But you cannot qualify for compensation until you meet the asbestos exposure and medical requirements.

- **ARE THERE ANY TIME DEADLINES THAT APPLY TO FILING A CLAIM UNDER THE SETTLEMENT?**

There is only one time deadline that applies to filing a claim: no payment will be made for claims under the settlement that were barred by the applicable statute of limitations as of January 15, 1993, the date the class action was filed. This is because claimants whose claims were time-barred as of January 15, 1993, could not recover damages in a lawsuit as of that time. The 20 CCR companies have agreed to toll (suspend) any other statute of limitations or similar timeliness rules for claims submitted for compensation under the settlement. You may therefore submit your claim at any time.

- **WHAT HAPPENS IF THE CCR DETERMINES THAT MY CLAIM DOES NOT MEET THE REQUIREMENTS FOR COMPENSATION BECAUSE IT WAS BARRED BY THE STATUTE OF LIMITATIONS AS OF JANUARY 15, 1993?**

If the CCR determines that your claim does not meet the requirements for compensation because it was barred by the applicable statute of limitations as of January 15, 1993, you may challenge that decision. Any dispute over this issue will be decided by a neutral arbitrator.

- **IF I RECEIVE PAYMENT FOR A NON-MALIGNANT CONDITION, MAY I SUBMIT A NEW CLAIM FOR A MALIGNANT CONDITION THAT LATER DEVELOPS?**

Yes. Each class member, however, may receive compensation for only one non-malignant and one malignant condition, and compensation already paid to a class member for a non-malignant condition will be taken into account in determining the settlement amount for a malignant condition.

C. COMPENSATION PAYMENTS UNDER THE PROPOSED SETTLEMENT

- **HOW MUCH MONEY CAN I EXPECT TO RECEIVE IF I QUALIFY FOR COMPENSATION?**

While no single monetary figure has been set for compensation, the settlement has established a minimum and maximum value and an average range for the four categories of asbestos-related medical conditions that are compensable under the settlement. See pp. A-4 — A-7 of the complete "Notice of Rule 23(b)(3) Class Certification for Settlement Purposes Only" (which accompanies these Questions and Answers). These values reflect payments that the 20 CCR companies involved in this class action have made to similar claimants whose cases have been settled in the last four years. The amount that you or other individuals will receive will depend on a number of factors similar to the ones that would be taken into account in a settlement of an individual lawsuit — such as, for example, the nature and extent of your injury, your age, your employment, and the number and age of your dependents. All in all, the settlement provides that, in the next ten years, over $1 billion will potentially be paid in compensation to approximately 100,000 class members.

- **AM I ENTITLED TO GREATER COMPENSATION IF EXTRAORDINARY CIRCUMSTANCES WARRANT IT?**

A class member who has an unusually high claim for damages against one or more of the 20 CCR companies may apply for compensation to an independent, neutral "extraordinary claims panel." There is no fixed limit on the amount of compensation this panel may reward to an individual class member, although there are

overall limits on the amount of compensation that may be paid to class members by this panel. There are also limits on how many "extraordinary" claims the panel may select each year. The criteria for selection as an "extraordinary" claim is a combination of age, number and age of dependents, relevant economic factors, an unusually high percentage of asbestos exposure to the products of one or more of the 20 CCR companies, and other similar factors that demonstrate a truly extraordinary claim for damages against one or more of the 20 CCR companies.

- **WHAT IF I AM DISSATISFIED WITH THE COMPENSATION I AM OFFERED BY THE CCR OR BY THE "EXTRAORDINARY CLAIMS PANEL"?**

You may choose, following a mandatory settlement conference, to have the compensation amount resolved by binding arbitration or by a jury trial in court. Although the number of class members who may have their compensation amount decided in this way in a given year is limited, those who are unable to have their compensation amount resolved in arbitration or court in one year will have priority the next year.

- **WILL THE PROCEEDING IN COURT DIFFER FROM A NORMAL LAWSUIT?**

Yes. Because the amount of compensatory damages is the only matter to be determined in court or the arbitration proceeding, the issues are very limited. The primary issues to be determined by the jury in court or in binding arbitration will be only whether the class member has an asbestos-related medical condition caused by one or more of the 20 CCR companies, and the appropriate amount of compensatory damages. The companies may not assert many of the defenses they would assert in a lawsuit outside of this settlement, and the individual class member may not seek damages for increased risk of cancer or for punitive damages.

- **ARE THERE LIMITS ON THE AMOUNT OF DAMAGES I MAY RECEIVE IN COURT OR IN BINDING ARBITRATION?**

No. There are no limits on the amount of damages that may be awarded in court or in binding arbitration. Depending on the

amount awarded, however, some of the damages award may be paid to you over a five-year period.

- **HOW MANY CLAIMS WILL BE COMPENSATED EACH YEAR?**

The settlement sets a maximum number of claims in each medical category that may be compensated in each year. These case flow maximums will provide for the settlement of approximately 100,000 claims over the first ten (10) years of the settlement. After the first ten (10) years that the settlement operates, new case flow maximums will be negotiated.

- **WHAT IF THE NUMBER OF CLAIMS THAT QUALIFY FOR COMPENSATION IN ONE YEAR EXCEEDS THE MAXIMUM THAT MAY BE PAID IN THAT YEAR?**

These claims will be given priority for payment in the next year.

- **HOW FAST WILL I BE COMPENSATED IF I QUALIFY FOR COMPENSATION?**

The CCR can take up to 90 days after a claim is sent to it to decide if the claim qualifies for compensation. If your claim qualifies for compensation, and you choose to take the minimum compensation amount for your medical category, you may receive that amount very quickly, often within 30 days after submitting the necessary settlement documents to the CCR. The CCR will evaluate and make offers to all other claimants in six month periods. If you accept the CCR's offer of compensation, you will be paid within 30 days after you have signed and submitted the necessary settlement documents to the CCR.

D. OTHER ISSUES CONCERNING THE PROPOSED SETTLEMENT

- **DOES THE PROPOSED AGREEMENT SETTLE ALL CLAIMS FOR ASBESTOS-RELATED PERSONAL INJURY BY CLASS MEMBERS AGAINST THESE 20 DEFENDANT COMPANIES?**

Yes. If approved by the Court, the proposal will settle all claims for asbestos-related personal injury against all 20 CCR

companies by class members who do not exclude themselves from the class.

- **WILL I GIVE UP MY WORKERS' COMPENSATION IF I PARTICIPATE?**

No. The settlement expressly states that it is not intended to, and shall not affect, add to, or diminish the right of class members to recover compensation benefits for asbestos-related personal injury or damages through workers' compensation or other similar statutory provisions for compensation by an employee against an employer, such as the Federal Employers' Liability Act or the Longshore and Harbor Workers' Compensation Act.

- **CAN I BRING SUIT AGAINST COMPANIES NOT INVOLVED IN THIS SETTLEMENT.**

Yes. The proposed settlement does not affect your right to bring suit against other companies who are not part of this settlement. In some circumstances, however, a class member may have to take certain actions in a suit against other companies if those other companies sue any of the 20 CCR companies seeking to force one or more of the 20 CCR companies to contribute to, or to pay entirely, the judgment obtained by the class member. The actions that a class member may have to take may include reducing any jury verdict that the class member receives against the other companies.

- **HOW DO THE 20 DEFENDANT COMPANIES DIVIDE UP THE PAYMENTS THEY MUST MAKE UNDER THE SETTLEMENT?**

Each of the 20 CCR companies has agreed to pay a fixed share of the compensation payments under the settlement, and each company is responsible only for its share. If a company does not pay its share, class members who have not received compensation may sue the company for its obligations either under the settlement or under ordinary principles of tort law (as though the settlement had never taken place). Similarly, class members who have received compensation for Non-malignant Conditions only would have those same options, but only with respect to later claims for malignant conditions. The company that did not pay its share would also have to give notice of that fact to class members.

- **WILL ANYONE MAKE SURE THAT THE SETTLEMENT IS PROPERLY ADMINISTERED?**

Yes. Each year, Class Counsel and a representative of the AFL-CIO will review the processing of claims by the CCR to make sure that the settlement terms have been properly carried out. During each review, Class Counsel and the AFL-CIO representative will have the right to examine all books and records maintained by the CCR related to the processing of claims under the settlement. Moreover, the Court will maintain jurisdiction to ensure that the settlement is properly administered.

- **DO THE 20 CCR COMPANIES HAVE ANY RIGHTS TO WITHDRAW FROM THE SETTLEMENT?**

Yes, under two conditions. As a group, they can withdraw from the settlement if an excessive number of class members exclude themselves from the class, and do not participate in the class action. This decision is in the sole discretion of the CCR Board of Directors, and the Board of Directors must make this decision to withdraw no later than 45 days after the close of the period for class members to exclude themselves from the class. Secondly, individual defendant companies can withdraw from the settlement after 10 years.

- **WHAT HAPPENS IF A COMPANY WITHDRAWS FROM THE SETTLEMENT AFTER 10 YEARS?**

If any company withdraws, the compensation values for each medical category will be reduced by that company's share. A withdrawing company, however, would have no right to a refund of any amounts previously paid or offered to class members under the settlement, and would have to give notice of the withdrawal to all class members. After withdrawal, class members who have not received either compensation or settlement offers could then file suit against the withdrawing company in the tort system (as though the settlement had never taken place). Similarly, class members who have received either compensation or settlement offers for Non-malignant Conditions only could sue the withdrawing defendant in the tort system, but only with respect to subsequent claims for malignant conditions. The Compensation Schedule under the settlement will also be renegotiated, within certain limits, after ten years.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

[Caption Omitted]

MEMORANDUM

Reed, J. **October 27, 1993**

This is a class action for asbestos-related personal injuries. Currently before me is the joint motion of the settling parties for approval of notice to the class (Document No. 445).

I. BACKGROUND[1]

On January 15, 1993, counsel for the plaintiff class filed the complaint in this action along with motions for class certification and for approval of a proposed settlement agreement ("proposed settlement" or "settlement") between the plaintiff class and the members of the Center for Claims Resolution ("the CCR defendants"). On the same day as the complaint was filed, the CCR defendants answered the complaint and joined in plaintiffs' request that the class be certified and the settlement agreement be approved. The complaint describes the plaintiff class as including all persons who were exposed occupationally, or through the occupational exposure of a spouse or household member, to asbestos or asbestos-containing products for which one or more of the CCR defendants may bear legal liability, and who had not filed a personal injury lawsuit based on that exposure as of January 15, 1993. The occupational exposure must have occurred in the United States or its territories, or while working aboard U.S. military, merchant, or passenger ships, and the occupationally exposed persons must have resided in the U.S. or its territories as of

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[1] For more background information, see *Carlough* v. *Amchem Prods., Inc.*, 1993 U.S. App. LEXIS 24930 (3d Cir. Sept. 29, 1993); *Carlough* v. *Amchem Prods., Inc.*, 1993 U.S. Dist. LEXIS 14402 (E.D. Pa. Oct. 6, 1993).

January 15, 1993. Legal representatives of such occupationally exposed persons who had not, as of January 15, 1993, filed a lawsuit based on that exposure, are also included in the class.

On January 29, 1993, the Honorable Charles R. Weiner of this Court granted conditional certification of an opt-out plaintiff class pursuant to Fed. R. Civ. P. 23(b)(3), and assigned to me the scheduling and review of settlement procedures and the resolution of objections to the settlement itself. Because of the number of objections to the subject matter jurisdiction of this Court, the fairness of the proposed settlement, and the constitutionality of notice to absent class members, I issued a Scheduling Order on June 2, 1993, setting dates for briefing and argument on these issues. Various objectors filed memoranda of law explaining legal bases for their objections, to which the named plaintiffs and the CCR defendants (hereinafter the "settling parties") responded. Hearings were held on August 23,1993 and October 5, 1993, at which time the objectors and the settling parties were heard.

On October 6, 1993, I found that this lawsuit is a justiciable case or controversy pursuant to Article III of the Constitution and that this Court has subject matter jurisdiction over this lawsuit pursuant to the diversity statute, 28 U.S.C. § 1332. *Carlough* v. *Amchem Prods., Inc.*, 1993 U.S. Dist. LEXIS 14402 (E.D. Pa. Oct. 6, 1993). This memorandum addresses (1) whether the proposed settlement is fair for the preliminary purpose of sending notice to the class, and (2) whether the plan for dissemination of notice and the contents of the notice satisfy the requirements of Fed. R. Civ. P. 23 ("Rule 23") and the due process clause of the Constitution.

II. DISCUSSION

A. Fairness of the Proposed Settlement

Before deciding whether the settling parties plan for dissemination of the notice and the contents of the notice should be approved, I must make a preliminary determination of whether the proposed settlement is fair. See Manual for Complex Litigation § 30.44, at 241 (2d ed. 1985).

After hearing extensive argument at the hearing on August 23, 1993, and having reviewed the proffers of the settling parties and the legal memoranda filed by the objectors, I find that the proposed

settlement is fair for the preliminary purpose of deciding whether to send notice to the class in that it appears to be the product of serious, informed, non-collusive negotiations,[2] it has no obvious deficiencies, it does not improperly grant preferential treatment to class representatives or segments of the class, and it clearly falls within the range of possible approval.[3] See *Id*. Although I accept as reliable the proffers of the settling parties as to the fairness of the proposed settlement and find based on the information before me that the terms of the proposed settlement are fair to all members of the class, I will undertake a more detailed examination and analysis of the additional data in support of the proposed settlement during the final fairness hearing process.

B. Adequacy of Notice to the Class

1. Dissemination of Notice

a. Description of the Plan for Dissemination of Notice

The settling parties' proposed plan for dissemination of notice (the "notice plan") has several features:[4] (1) individual notice, by first class mail, to the 9,000-plus plaintiffs who have filed suit against one or more of the CCR defendants since this class action was filed on January 15, 1993, (2) efforts to identify other absent class members and individual notice provided to those persons

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[2] See *Carlough* v. *Amchem Prods., Inc.*, 1993 U.S. Dist. LEXIS 14402 (E.D. Pa. Oct. 6, 1993) (finding that this case is a non-collusive case or controversy under Article III of the Constitution).

[3] In reviewing the fairness of the proposed settlement, I have carefully considered all of the arguments made by the various objectors. I find these arguments unpersuasive, and thus have not addressed them in this memorandum.

[4] The description of the notice plan is derived from the Declaration of Katherine Kinsella, Senior Vice-President and Senior Consultant to the Kamber Group, which is attached to the Joint Motion of the Settling Parties for Approval of Notice to the Class. Class counsel and the CCR defendants retained Ms. Kinsella and the Kamber Group to design the notice plan.

identified, and (3) notice to all others by publication and through various persons and organizations.

The settling parties contend that the only class members whose identities are currently known are the 9,000-plus plaintiffs who have filed suit against one or more of the CCR defendants since this class action was filed on January 15, 1993. The notice plan provides for individual notice to be sent by first class mail to counsel for each of these plaintiffs.[5]

Given the potential size of the plaintiff class, the number of currently identifiable class members is relatively small. Because of this, the notice plan also includes substantial measures to find the names and addresses of other class members and includes individual notice provided directly to those identified by these measures. These efforts will be made through contacts with national and local labor unions and plaintiffs' lawyers, and through paid and unpaid advertising.

With respect to the unions, the settling parties have drawn up a list of 56 national or international unions that may have current or retired members in the plaintiff class.[6] Because the unions do not typically make their member lists available to the public, the settling parties will send a letter to each of the 56 unions to ask for names and addresses of any current or retired member who worked

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[5] The notice materials will be sent directly to any plaintiff who is not represented by counsel. This list of plaintiffs will be continually updated throughout the proposed notification period, with complete individual notice packets sent to new entrants on the list up until two weeks prior to the close of the notification period.

[6] The AFL-CIO, a federation of eighty-six unions purportedly with 13.3 million members, has expressed its support of the proposed settlement in this case. The AFL-CIO stated in its amicus brief that it has had a "long standing interest in asbestos compensation and litigation issues," because "[a] substantial percentage of the workers exposed to asbestos through their jobs in the United States have been union members." Amicus Brief of AFL-CIO at 1 (filed September 24, 1993). The AFL-CIO also stated that it "intends to take an active part . . . in assisting the settling parties in disseminating the court approved notice to union members." *Id*. at 4.

with or around asbestos or asbestos-containing products. Complete individual notice packets will be mailed to all names and addresses generated through these efforts. Alternatively, if such names and addresses cannot be furnished, the settling parties will propose some alternative means, such as a mailing by the union at the CCR defendants' expense, through which notice of this class action and proposed settlement may be sent to current and retired union members.[7] If any national or international union declines to help identify or mail notices to its members, letters will be sent to affiliated local unions containing the same request for help.[8]

With respect to efforts to identify individual class members through contacts with plaintiffs' attorneys, complete information packets will be mailed under the notice plan to the 1000-plus attorneys who have filed claim against one or more of the CCR defendants. Each attorney will be asked to give the settling parties the names and addresses of any potential class members known to the attorney, and complete notice packets will be mailed to those persons identified.

Finally, the notice plan provides for a campaign of paid and unpaid advertising which is designed to result in further individual notice. The campaign will encourage potential class members to call a toll-free telephone number or to contact class counsel, and a complete notice packet will be sent to those who call.

The paid advertising component of the publication campaign consists of two rounds of advertisements in newspapers and in Parade magazine and a 30-second television advertisement. Before

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[7] If any union is willing only to enclose a one-page notice concerning this case with some other union mailing, such as pension checks, the union will be given copies of the shorter print advertisement, described below, for insertion in the mailing. The CCR defendants will pay the mailing's costs.

[8] The local unions will be those in areas in the United States where large numbers of claims have been filed against the CCR defendants. And, as with the national or international unions, if certain local unions are willing only to enclose a one-page notice with another union mailing, the short print ad will be used, and the CCR defendants will pay the costs of the mailing.

deciding where to advertise, the settling parties determined that, based on various factors, the primary target group for the notice plan would likely be males age 45 or older. Thus the paid advertising plan is weighted towards this group, although it also targets males and females ages 35 or older.[9]

The first round of print advertising will consist of a one-half page ad[10] in 292 newspapers covering 136 media markets.[11] The ad will generally be run in the Sunday edition of those newspapers, as it typically has the largest circulation of any day of the week. To the extent possible, the ad will be placed in the sports section. The approximate circulation of the 292 selected newspapers is 46 million.

A second round of print advertising will run two weeks after the first and will use the same ad. This round will be run in 59 media markets which were chosen by the settling parties because they have historically generated large concentrations of asbestos claims against the CCR defendants. These markets include 114 newspapers. During this period, the same ad will also be placed in a full page of *Parade* magazine. *Parade* is the largest general circulation magazine in the United States and is included in 351 local newspapers. *Parade* has a circulation of over 36 million and will cover 11.8 million households that are outside the media markets where the newspaper ads will be purchased.

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[9] For a discussion of how the settling parties chose the newspapers and media markets in which to advertise, see *Memorandum in Support of Joint Motion of the Settling Parties for Approval of Notice to the Class* at 14.

[10] The ad will be one full-page in tabloid-style newspapers.

[11] As discussed below, the ad will describe, *inter alia*, the class, the proposed settlement, the consequences of not opting out, the right to appear and object to the proposed settlement, and the procedures for exclusion from the class. *See* Exhibit C to the Joint Motion. The ad will also urge those who believe they are members of the class to call the toll-free telephone number so that a complete notice packet can be mailed to them.

The final element of the paid advertising campaign is a commercial spot television notice. In deciding where to air the television notice, the settling parties selected eighty media markets based partly on information concerning historic case fillings against the CCR defendants. Those eighty markets include 64 million television households, which is 69% of all television households in the United States. The 30-second television notice, weighted toward the likely class members, will appear multiple times in each market, at different times of day. All in all, the settling parties contend that the television notice should be seen cumulatively over 250 million times by adults ages 35 and older.[12]

Under the notice plan, the television notice will be aired throughout the week before the first round of paid newspaper advertising. The ad will have both a visual and an audio component and review of the proposed "copy" shows that it will encourage potential class members to look for the print ad in the newspapers (where a more extensive explanation of the class action and the proposed settlement will be found). The "copy" reveals as well that the television ad, just as the print ad, will urge all those who believe they may be a class member to call a toll-free telephone number to receive a complete individual notice packet.

In addition to paid advertising, the notice plan also calls for unpaid advertising, that is efforts to have public service announcements concerning the case and the proposed settlement both broadcast and published. A press release or newscast script will be sent to all national wire services and radio stations, and to all major print, radio, and television outlets in major media markets. A cover letter will ask that these media outlets assist in publicizing the class action and proposed settlement by airing public service announcements.

The efforts described above to obtain the names and addresses of absent class members through contacts with national and local labor unions and plaintiffs' attorneys, and through paid and unpaid

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[12] In 56 of the 80 media markets, the ad will reach 86.4% of the television households, with a frequency of 4.6 times. In the remaining 24 markets, the ad will reach 73.7% of the television households, with a frequency of 2.7 times.

advertising are only partly designed to result in further individual notice. These same efforts, especially the advertising campaign, are also designed to, on their own, provide Rule 23 notice to those class members who do not respond and whose names and addresses cannot otherwise be ascertained through reasonable effort. *See* Manual Complex Litigation § 30.211, at 221 (In class actions, notice by publication "may be the principal means for informing [certain class members] of their Rule 23 rights.").

For example, with respect to the contacts with unions, in addition to the efforts to identify individual class members, the notice plan provides that notification packets be sent to key officials at each of the 56 unions identified by the settling parties. These mailings are intended to further urge the unions to use all reasonable means to notify current members and retirees about the class action and settlement. Camera-ready materials will be provided for immediate use in any publications distributed by the unions to their members and retirees. In addition, identical packets will be sent to officials of other labor bodies that are comprised of various combinations of the 56 unions listed, and officials at the approximately 10,000 to 15,000 local labor unions affiliated with these 56 unions. The affiliated local unions have been chosen because they are in areas where there have been large numbers of claims filed against the CCR defendants. Again, these mailings are intended to encourage union officials to use the materials provided by the settling parties to notify their members of the class action and proposed settlement.

Along this same line, a notification packet will be mailed to the more than 1,000 attorneys who have represented plaintiffs in lawsuits against one or more of the CCR defendants. Thus, in addition to asking each attorney for the names and addresses of potential class members, the cover letter will also ask each attorney to use the notification materials to help notify potential class members of the class action and proposed settlement.

To supplement these efforts to provide Rule 23 notice by publication to those whose names and addresses cannot otherwise be obtained, the notice plan provides for contacts with other

organizations whose members may be in the class, trade, industrial, and legal publications, and various state and federal courts.[13]

The settling parties have drawn up a list of 40 trade or other organizations whose members may be in the class. The total membership of these organizations is in excess of 38.7 million. Just as with the unions and the plaintiffs' attorneys, a packet will be sent to these organizations, and they will be urged to use all reasonable means to notify their members or other potential class members about the class action and proposed settlement. Again, camera-ready materials will be available for immediate use in any publications distributed by the organization to its members.

The settling parties also prepared a list of 41 trade, industrial and legal publications whose readers include individuals who may have worked with or around asbestos or asbestos-containing products, or attorneys who routinely represent plaintiffs in asbestos personal injury litigation. The total circulation of these publications is approximately 4.5 million. Under the notice plan, a packet, including the camera-ready materials, will be sent to each publication. A cover letter will urge each publication to use these materials to publicize the class action and proposed settlement to its readers.

Finally, the notice plan provides for a complete set of notice materials and an appropriate cover letter to be sent to several hundred state and federal courts where claims have been filed against one or more of the CCR defendants. The cover letter will explain that these materials are being provided to the courts as a courtesy, and will ask the courts to help in the notification effort in any way that they can.

b. Timing of the Notice Plan and the Opt-Out Period

The settling parties propose that the dissemination of notice be completed in eight weeks. Under the notice plan, mailings of individual notice packets to those persons who have filed claims since January 15, 1993, and to those whose names and addresses

[13] According to the settling parties, these efforts will also result in some additional individual notice in that those persons contacted may call the toll-free or class counsel and provide their name and address.

are ascertained from unions or plaintiffs' attorneys, will be completed (to the extent possible) within three to four weeks. Mailings of notification materials to unions, mass media outlets, trade or other organizations, trade, industrial and legal publications, and various state and federal courts will be completed in this same time period. The paid television advertising will run in weeks four and five, with the first round of paid print advertising appearing on the Sunday at the beginning of week five or six. The second round of paid print advertising will appear on the Sunday at the beginning of week seven or eight. The advertisement in *Parade* will also run in this same time period.

The mailing of individual notice packets to potential class members who call the toll-free telephone number, or to plaintiffs who file claims against the CCR defendants after July 31, 1993, will continue throughout the notification period. Given that the settling parties believe the dissemination plan will be completed within eight weeks, they propose an opt-out period of twelve weeks. This would allow class members *at least* four weeks after receipt of notice to decide whether or not to exclude themselves from the class.[14] The majority of class members, *i.e.*, those who receive notice in the beginning of the notice period, will obviously have more than four weeks to decide whether or not to opt out.

The settling parties will obtain a post office box in the name of the Clerk of the Court for receiving "Exclusion Requests" from class members. The box will be checked on a daily basis, and the parties will maintain a list and copies of all Exclusion Requests received. The settling parties also propose that, within a reasonable time after the close of the opt-out period, they file a sealed or unsealed report to the Court concerning implementation of the dissemination plan outlined above. They propose that the report contain a list of the names and addresses of all potential class members to whom individual notice packets were mailed.

c. Whether the Notice Plan Satisfies Rule 23

As stated above, this class action was conditionally certified under Federal Rule of Civil Procedure 23(b)(3). Because the

[14] The Exclusion Requests will be considered timely if they are postmarked before the expiration of the opt-out period.

judgment in a class action maintained under this subdivision binds all members of the class unless they expressly opt out, Rule 23(c)(2) requires that the class members be informed of the existence of the action. In addition, when the named parties to a class action reach a proposed settlement, Rule 23(e) requires that the class members be notified of the terms of the proposed settlement. These requirements were designed to protect absent class members' due process rights. *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). As the Supreme Court as noted, the "right to be heard has little reality of worth unless one is informed that the matter is pending and can choose for [him/herself] whether to appear or default, acquiesce or contest." *Id.* at 314.

Because the named parties in this class action filed the proposed settlement at the same time as the complaint, the notice materials proposed by the settling parties are designed to simultaneously inform class members of both the existence of the class action, pursuant to Rule 23(c)(2), and the substance of the proposed settlement, pursuant to Rule 23(e). Although such combined notices have been approved by the Third Circuit, *Greenfield* v. *Villager Industries, Inc.*, 483 F.2d 824 (3d Cir. 1973), they must satisfy the requirements of both Rules 23(c)(2) and 23(e). *See* 5 H. Newberg & A. Conte, Newberg on Class Actions § 8.21, at 8-67 (3d ed. 1992) (hereinafter "Newberg on Class Actions"). The requirements of Rule 23(c)(2) are stricter than the requirements of Rule 23(e) and arguably stricter than the due process clause. *See* 5 Newberg on Class Actions § 8.04, at 8-16; *Zimmer Paper Products, Inc.* v. *Berger & Montague, P.C.*, 758 F.2d 86, 90 (3d Cir.), *cert. denied*, 474 US. 902 (1985). Thus, it is enough that the plan for dissemination of notice satisfies Rule 23(c)(2). Accordingly, this memorandum need only discuss the requirements of Rule 23(c)(2).

Rule 23(c)(2) requires "the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2). However, "[t]he type of notice to which a member of a class is entitled depends upon the information available to the parties about that person" and the possible methods of identification. *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1098 (5th Cir. 1977), explaining *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950); see also *In re Domestic Air Transp. Antitrust Litig.*, 141 F.R.D. 534, 539 (N.D. Ga. 1992). Where a potential class member's address is known or is available through reasonable efforts, individual or actual notice is required; constructive notice by publication in that circumstance would not satisfy the requirements of Rule 23(c)(2). *Eisen* v. *Carlisle & Jacguelin*, 417 U.S. 156 (1974); *In re Nissan*, 552 F.2d at 1099. In determining the reasonableness of the effort required, the court must look to the "anticipated results, costs, and amount involved." *In re Nissan*, 552 F.2d at 1099. For example, "[a] burdensome search through records that may prove not to contain any of the information sought" is not required. *Id.* Rule 23 does not require the parties to exhaust every *conceivable* method of identifying the individual class members. *See. e.g.*, *Burns* v. *Elrod*, 757 F.2d 151, 154 (7th Cir. 1985). For those whose names and addresses cannot be determined by reasonable efforts, notice by publication will suffice under Rule 23(c)(2) and under the due process clause. *Mullane*, 339 U.S. at 317-18. These class members will be bound by the final judgment in a class action despite the lack of individual notice.

After reviewing the case law, I find that the efforts in this case to identify absent class members are adequate to meet the individual notice requirements of Rule 23(c)(2). As the Manual for Complex Litigation recognizes, a reasonable notice plan is a function of anticipated results:

> Receipt of actual notice by all class members is required neither by Rule 23 nor the Constitution .... What efforts are reasonable under the circumstances of the case rests initially in the sound discretion of the judge before whom the case is pending .... [T]he fact that notice to some class members must be given by publication is not necessarily fatal. In all cases the Court should strike an appropriate balance between protecting class members and making Rule 23 workable.

Manual for Complex Litigation § 30.211, at 223; *see also In re "Agent Orange" Product Liability Litig.*, 818 F.2d 145, 168 (2d Cir. 1987), *cert. denied*, 484 US. 1004 (1988) ("Rule 23, of course accords considerable discretion to a district court in fashioning notice to a class."); *Berland* v. *Mack*, 48 F.R.D. 121, 129 (S.D.N.Y. 1969) ("Rule 23 contemplates cooperative ingenuity on

the part of counsel and the court in determining the most suitable notice in each case.").

In this case, although the list of known class members is relatively short, the notice plan provides for very substantial efforts to determine the names and addresses of additional class members. As described in more detail above, these efforts include contacts with national and local labor unions and plaintiffs' lawyers, and an extensive campaign of paid and unpaid advertising. A long list of national and local unions and over 1,000 plaintiffs' attorneys will be contacted and asked to provide names and addresses of potential class members. If the unions prefer instead to mail notice on their own to their members, the CCR defendants will pay for such mailings. In addition, every element of the publication campaign — the mailings to unions, other organizations and publications, plaintiffs' attorneys, courts, and the extensive paid and unpaid media advertising — has been designed to not only provide notice by itself but also to result in further individual notice. All persons identified through these efforts will be mailed a complete notice packet.

A comparison of the individual notice campaign proposed here with those approved in other similar class actions, *i.e.*, class actions involving claimants with no presently manifested disease ("future claimants"), shows that the efforts here are more than adequate to meet the requirements of Rule 23(c)(2).

In the *Johns-Manville* bankruptcy proceedings *no* efforts to give the future claimants individual notice were made at all. *In re Johns-Manville Corp.*, 68 B.R. 618, 626 (Bankr. S.D.N.Y. 1986) (outlining notice campaign), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane* v. *Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988). Nonetheless, the court concluded that the notification campaign was fully adequate. *In re Johns-Manville*, 68 B.R. at 626.

In the *Manville Trust* limited fund class action, which followed the bankruptcy reorganization, very limited individual mail notice was directed at future claimants without manifested conditions. Instead, mail notice was sent only to known claimants or their counsel, co-defendants counsel, courts in which the Trust was involved as a party, judges who participated in asbestos

coordinating committees, parties and co-defendant counsel in the Brooklyn Navy yard litigation, persons on Manville's service list from the underlying bankruptcy proceeding, the Property Damage Trust, certain court-appointed experts, and counsel for certain unions. *In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. 710, 774-75 (E. & S.D.N.Y. 1991), *vacated on other grounds*, 982 F.2d 721 (2d Cir. 1992), *modified on rehearing*, 993 F.2d 7 (2d Cir. 1993). Thus, only minimal efforts were made to obtain the names and addresses of persons who had been exposed to Manville asbestos but who had not yet manifested any asbestos-related condition. Still, the notice was found "adequate to apprise potential class members, including ... possible future claimants, to the extent reasonably possible, of the pendency of the action." *Id.* at 801.

Also, in the *Agent Orange* litigation, the Rule 23(b)(3) opt-out class included all persons exposed to Agent Orange in Vietnam, regardless of whether they had manifested any physical injury related to that exposure. *In re "Agent Orange"*, 818 F.2d at 154; *In re "Agent Orange" Prod. Liab. Litig.*, 996 F.2d 1425, 1429-30, 1433-35 (2d Cir. 1993). The individual notice efforts in the *Agent Orange* litigation involved mailing written notice to persons who had already filed lawsuits in federal court (or whose state court actions were removed to federal court) and whose cases had been transferred to the Honorable Jack B. Weinstein, persons who had intervened or sought to do so, class members who had not yet filed suit or sought to intervene but were represented by counsel associated with the plaintiff's management committee, and all persons listed on the Veterans' Administration's "Agent Orange Registry." 818 F.2d at 155; *see also In re "Agent Orange" Prod. Liab. Litig.*, 100 F.R.D. 718, 729 (E.D.N.Y. 1983). In addition, notice was sent to state governors for referral to any state agencies that might be able to provide the court with names and addresses of class members. 100 F.R.D. at 730-31. Lastly, media announcements included a toll-free telephone number to be called for further information. *Id.* at 730, 734, 735.

Thus, the efforts to identify unknown future claimants in the *Agent Orange* litigation were more limited than the efforts proposed here. Individual notice was given only to those persons already known to the plaintiffs' counsel in the case, those listed on the "Agent Orange Registry," any persons whose names were

furnished by the state governors, and those who called the toll-free telephone number. No efforts, for example, were made to solicit veterans' groups to obtain further names and addresses. Nonetheless, the Second Circuit upheld the notice campaign, praising it as "a creative approach appropriate to this unique case." 818 F.2d at 167. This same notice was again upheld by the Second Circuit against a collateral attack. *Ivy*, 996 F.2d at 1435.

The individual notice campaign proposed in this case goes beyond that provided in those cases cited above. The notice plan proposed by the settling parties will make substantial efforts to obtain the names and addresses of additional class members by contacting numerous unions and plaintiffs' lawyers, and by sending individual notice packets to all potential class members who call the publicized toll-free telephone number.

Contrary to the contention of the objectors, the Supreme Court's holding in *Eisen* does not mandate a different finding in this case. In *Eisen*, the plaintiff class consisted of over six million buyers and sellers of odd-lot securities. Some 2,225,000 of the class members could be identified by name and address from the computer records of various brokerage firms. The named plaintiff argued that Rule 23(c)(2) did not require individual notice to each identifiable class member, pointing out that the cost of such notice was prohibitively high and to require such notice would effectively end the case as a class action. The Supreme Court held that the mandate of Rule 23(c)(2) requiring individual notice to those persons who can be identified through reasonable effort is "unmistakable." *Id.* at 173. The Court observed that "[t]here is nothing in Rule 23 to suggest that the notice requirements can be tailored to fit the pocketbooks of particular plaintiffs," *Id.* at 176, and stressed that "individual notice is not a discretionary consideration to be waived in a particular case." *Id.*

Relying on *Eisen*, several objectors argue that the settling parties must, at the very least, obtain lists of the names and addresses of (1) present and former employees of the CCR defendants and of their predecessors whose job it was to install, or to work around asbestos, (2) present and former employees of naval and commercial shipyards, and (3) present and former employees of major purchasers of asbestos or asbestos-containing products from the CCR defendants. Brief of the law firm of Baron & Budd

("Baron Brief") at 7-11. The objectors claim that the majority of the persons on these lists are members of the plaintiff class.[15] They also contend that the lists are obtainable through reasonable effort, and thus, regardless of the cost, individual notice packets must be mailed to those persons.

After reading the memoranda of law and hearing extensive argument on exactly what lists are available and what such lists might contain, I conclude that the efforts suggested by the objectors would be unduly time-consuming and expensive, and not necessarily fruitful. First, to the extent that these lists are in the control of third parties, it is unlikely that the third parties would cooperate. Unlike unions — who because of their relationship with potential class members have an incentive to cooperate in the notification effort — former customers of the CCR defendants, former subsidiaries of the CCR defendants, and shipyards are unlikely to want to help notify their former employees of this class action because they may fear that such notice will increase the number of asbestos-related workers' compensation claims against them. Second, assuming such lists exist or could be generated, none of the lists would be current. The settling parties claim and the objectors do not dispute that such lists would contain pre-1980 addresses.

Third, the lists would be substantially overinclusive. Far fewer of those persons whose names would be generated are indeed members of the class. And, there would be no easy method of knowing which persons on these lists were likely to have been exposed to asbestos and which persons were not. *See In re Domestic Air*, 141 F.R.D. at 546 (court held that it was not necessary to send individual notice to all those on an overinclusive list when there were no data which would enable the parties to determine who on the list was a class member). In striking the balance between protecting the rights of absent class members and making Rule 23 workable, courts have held that it is not necessary to send individual notices to an overinclusive group of people simply because that group contains some additional class members

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[15] The objectors cite nothing to suggest that their claim is based on anything other than pure conjecture.

whose identifies are unknown. *See, e.g., In re "Agent Orange" Product Liab. Litig.*, 818 F.2d at 169 (rejecting argument that individual mail notice should have been provided to all 2.4 million Vietnam Veterans, because there were "far fewer than that number exposed to Agent Orange" and thus notice would have been "considerably overbroad"); *In re Domestic Air*, 141 F.R.D. at 539-46 (sending notice to larger group "would most likely confuse the recipients and encourage [responses] by non-class members"); *Skelton* v. *General Motors Corp.*, 1987 U.S. Dist. LEXIS 795, at *8 & n.3 (N.D. Ill. Feb. 3, 1987) (rejecting overinclusive list because it "could mislead many thousands of ineligible [persons] into thinking they qualify to recover in this action" and would "generate considerable confusion and additional expense in administering the settlement.") Further, courts have refused to order identification efforts that would require "impractical and extended searches" or would be unduly time-consuming or expensive. See *Helfand* v. *New America Fund, Inc.*, 64 F.R.D. 86, 92-93 (E.D. Pa. 1974) (quoting *Mullane*, 339 U.S. at 317), vacated on other grounds sub nom., *Girsh* v. *Jepson*, 521 F.2d 153 (3d Cir. 1975).

Thus, this case is different than *Eisen*. In *Eisen*, the 2,225,000 persons on the computer lists were known to be members of the plaintiff class. See *In re Domestic Air*, 141 F.R.D. at 546 (*Eisen* represents "classic case" for individual notice where "records kept by defendants indisputably contained the names and addresses of the universe of class members."). Although providing each person on the computer list with individual notice would have been expensive for the named plaintiff in *Eisen*, and therefore extremely burdensome, actually identifying those persons as class members was clearly possible through reasonable effort. As the court noted in *In re Nissan*, the word "reasonable" in the "reasonable effort" requirement of Rule 23(c)(2) could not be ignored. *In re Nissan*, 552 F.2d at 547. "In every case, reasonableness is a function of anticipated results, costs, and amount involved." *Id.* (citation omitted).

In this case, the methods suggested by the objectors would, after burdensome and expensive efforts, produce at best a list of names and outdated addresses that would represent only a fraction of the class, and that would include many names of non-class

members. It would not be reasonable to mail individual notice packets to these persons, especially in light of the extensive, and probably more effective, notice plan proposed by the parties and described above.

The objectors also argue that the notice plan fails to provide a sufficient time in which notice to the class can be accomplished and in which class members can exercise their option to exclude themselves. The Supreme Court has held that both due process and Rule 23(c)(2) require that notice of a judicial proceeding affecting the rights of an absent party "afford a reasonable time for those interested to make their appearance." *Mullane*, 339 U.S. at 314. In this case, the settling parties have proposed that the dissemination of notice be completed in eight weeks with the opt-out period extending an extra four weeks beyond that. This would allow class members who last receive notice at least four weeks after receipt of notice to decide whether or not to exclude themselves from the class.

The objectors claim that the eight-week notice period is inadequate, and that the paid newspaper and television advertisements should continue for at least six months. The objectors give no real reasons in support of their argument, except to say that six months is better than two months. Again, notice need not be the best that it can be. It is enough that it satisfies Rule 23(c)(2) and the due process clause. I conclude that the eight-week notice period, given that it includes extensive efforts to both identify individual class members, provide individual notice, and provide notice by publication, is sufficient.

The objectors also claim that the opt-out period is too short. The objectors cite to *Greenfield* v. *Villager Industries, Inc.*, 483 F.2d 824, 833-34 (3d Cir. 1973), in support of their claim. In *Greenfield*, the class included holders of certain shares of stock, and the notice consisted of two small newspaper ads. After the appearance of the ads, the class members had only 30 days either to exclude themselves from the class or file a claim for compensation. *Id.* at 830, 833. Class members who took neither step lost all rights to compensation. *Id.* at 828. In these circumstances, the Third Circuit found that the entire notice plan was inadequate, including the 30-day opt-out period, since brokerage firms would need longer than 30 days after seeing the

newspaper ads to search their records and notify potential class members concerning their rights. *Id.* at 834.

The objectors argue that the unions will have to do what was expected of the brokerage firms in *Greenfield*, and, as in that case, the one-month opt-out period is too short. In this case, however, the total opt-out period is twelve weeks. The extra four-weeks at the end of the latest dissemination of notice is to ensure that all those notified will have *at least* one month to decide whether to exclude themselves from the class. Also, the publication campaign in this case is much more extensive than the inadequate notice given in *Greenfield*.

I find that *Greenfield* does not hold that all one-month opt-out periods are inadequate as a matter of law. And, after reading the memoranda of law and hearing argument on the timing of the notice plan and the period for opting out, I find that the eight-week notification plan and the twelve-week opt-out period are adequate in this case.

C. Conclusion

As stated above, I conclude that the settling parties' plan for the dissemination of notice, including the timing, satisfies the requirements of Rule 23(c)(2), and therefore, the requirements of the due process clause. It is clear to me that the individual notice campaign and the notice by publication campaign together are designed to reach the maximum number of class members. However, because the class in this case is potentially very large, and the objectors numerous, I will order that the settling parties, at the end of the first four-week period, file a report with the Court which contains the following information: (1) the number of individuals actually notified, (2) the categories of individuals notified, and (3) a description of precisely what efforts the various "volunteer" organizations and persons[16] have made to notify potential class members. The Court, upon reviewing the mid-term report, may amend the notice plan if necessary to satisfy the requirements of Rule 23(c)(2).

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[16] The "volunteer" organizations include unions, plaintiffs' attorneys, other organizations whose members may be in the class, and trade, industrial, and legal publications.

As mentioned above, the settling parties also propose that, within a reasonable time after the close of the opt-out period, they file a report to the Court containing a list of the names and addresses of all potential class members to whom individual notice packets were mailed.[17] The requirement of a mid-term report does not relieve the settling parties of this responsibility. Moreover, I will order the settling parties to include in their final report the information requested above in the mid-term report.

2. Contents of the Notice

a. Description of Notification Materials

The notification materials include the following items: (1) the full, Rule 23 notice (the "Notice"), (2) a document entitled "Questions and Answers on the Class Action Lawsuit and Proposed Settlement," (3) the print advertisement, (4) the "copy" for the television advertisement, (5) the camera-ready materials, (6) the lists of CCR defendants, asbestos-containing products and occupations of those potentially exposed to asbestos, (7) the press release and newscast script, (8) the script for the toll-free telephone number operator, (9) and the cover letters to various persons and organizations.

The most detailed notification document is the full Notice, which is a 27-page document.[18] This Notice is a combination notice under Rule 23(c) and Rule 23(e), which means that it gives class members notice of both the class action and the proposed settlement. Pursuant to Rule 23(c), the Notice notifies class members of the existence of the class action and explains the procedures for opting out of the class and the consequences of remaining in the class, and informs each class member who does not opt out of his or her right to enter an appearance in the class action through counsel. The Notice has a heading in bold letters which reads: "ATTENTION: ALL PERSONS WHO HAVE WORKED WITH OR AROUND ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS, THEIR SPOUSES OR

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[17] Because the final report will contain the names and addresses of potential class members, I will order that it be *sealed*.

[18] Exhibit A to the Joint Motion.

HOUSEHOLD MEMBERS, AND THE FAMILY MEMBERS OR LEGAL REPRESENTATIVES OF SUCH INDIVIDUALS."

The Notice also includes an "Exclusion Request Form" which class members who wish to opt out must complete and return to the Court. Pursuant to Rule 23(e), the Notice also summarizes the terms of the proposed settlement (both briefly in the body of the Notice and in greater detail in a 14-page Appendix), tells class members how to obtain a full copy of the settlement agreement, and explains how class members may review additional materials relevant to the class action and proposed settlement.

Along with the full Notice, those class members who can be identified through the efforts described above will also be mailed a document entitled "Questions and Answers on the Class Action Lawsuit and Proposed Settlement."[19] This document is essentially an explanation of the main points of the Notice in a question-and-answer format. It takes important blocks of information concerning the class action and settlement and breaks them down into smaller units that can be more easily understood.

The print advertisement will run as a one-half page ad in most newspapers and a one full-page ad in tabloid-style newspapers and in *Parade* magazine.[20] The ad gives basic information about the class action, the proposed settlement, the procedures for opting out and the consequences of remaining in the class, and the right to enter an appearance through counsel. The ad has a headline, directed in bold letters to "ALL PERSONS WHO HAVE WORKED WITH OR AROUND ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS, THEIR SPOUSES, HOUSEHOLD AND FAMILY MEMBERS AND LEGAL REPRESENTATIVES."[21] A list of asbestos-containing products and occupations where exposure to these products potentially

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[19] Exhibit B to the Joint Motion.

[20] Exhibit C to the Joint Motion.

[21] Due to the size of *Parade* magazine, the headline of the advertisement will be slightly smaller than shown in Exhibit C to the Joint Motion, but the text of the ad in *Parade* will be the same.

occurred is also included in the ad. The ad urges any potential class members with questions to call the special toll-free telephone number or to contact class counsel to obtain a complete individual notice packet.

The 30-second television notice is designed to catch the attention of potential class members, to alert them to the existence of the class action, to encourage them to look in their newspapers for the more thorough print advertisement and call the toll-free telephone number if they wish to receive a complete individual notice packet.[22] The ad will have both spoken text and a rolling text on the screen, and will read as follows:

> Attention
>
> A class action lawsuit involving individuals occupationally exposed to asbestos is pending in federal court.
>
> If you're a class member, your rights may be affected by this lawsuit and a proposed settlement.
>
> Class members are:
>
> * all persons exposed occupationally to asbestos;
>
> * individuals exposed through the occupational exposure of a spouse or household member;
>
> * family or legal representative of those exposed
>
> For information, see your Sunday paper, or call 1-800-xxx-xxxx (repeat number).

The camera-ready materials are small announcements which are designed to be used in publications such as those distributed by many state and local unions and labor bodies that will not accept paid advertising.[23] As with the television notice, the camera-ready materials encourage the readers to look in their newspapers for the more detailed print advertisement and call the toll-free telephone

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[22] Exhibit C to the Joint Motion.

[23] Exhibit E to the Joint Motion.

number if they wish to receive a complete individual notice packet.[24]

The lists of the CCR defendants, the asbestos-containing products and the occupations of those persons who were potentially exposed to asbestos or asbestos-containing products will be included in the notification materials sent to unions and similar trade or other organizations.[25] These lists will also be included in the full Notice and the print advertisement to further clarify the scope of the class.

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[24] The camera-ready announcements read as follows:

ATTENTION
ALL PERSONS WHO HAVE WORKED WITH OR AROUND ASBESTOS OR ASBESTOS-CONTAINING PRODUCTS

A proposed class action settlement involving individuals who were exposed occupationally, or through the occupational exposure of a spouse or household member, to asbestos or asbestos-containing products is now pending in the United States District Court in Philadelphia. Family members or legal representatives of exposed persons are also class members.

If you, or a spouse or household member worked with or around asbestos or asbestos-containing products, you may be a class member, and your rights may be affected by this class action and proposed settlement.

If you are a class member, you may exclude yourself from the class. If you are a class member and you do not exclude yourself from the class, you have the right to participate in the class action through counsel, and you will be bound by the results of the class action and settlement.

For further information about the class action and proposed settlement, and the procedures for exclusion from the class, see your local Sunday newspaper or weekly, or call

1-800-xxx-xxxx or Class Counsel 1-800-666-7503

[25] Exhibit F to the Joint Motion.

The press release and newscast script give basic information concerning the class action and settlement.[26] They are designed to be distributed as public service information to newspapers, wire services, and television and radio outlets in numerous media markets.

The notification materials also include a script to be followed by the telephone operator when answering calls placed to the toll-free number which all the notification materials urge potential class members to call to obtain a complete individual notice packet.[27] The script is designed to ensure that erroneous information concerning the class action and settlement will not be disseminated by the toll-free operators. Pre-stuffed individual notice packets will be labeled so that the correct materials (the Notice or the Stipulation of Settlement itself or both) are mailed to potential class members who call the toll-free telephone number.

Finally, the notification materials include cover letters to be sent to potential class members, plaintiffs' attorneys, unions and labor bodies, trade and other organizations, trade, industrial, and legal publications, media outlets, and state and federal courts.[28] These letters inform the reader of the existence of the class action, including a description of the class, and urge them to help in the notification efforts.

b. Whether the Notice Materials Satisfy Rule 23(c)(2) and Rule 23(e)

The requirements for the contents of the notice to be provided to absent class members to inform them of the lawsuit and the proposed settlement are set forth in Rules 23(c)(2) and (e). Again, because the named parties in this class action filed the proposed settlement at the same time as the complaint, the notice materials are designed to simultaneously inform class members of both the existence of the class action, pursuant to Rule 23(c)(2), and the substance of the proposed settlement, pursuant to Rule 23(e).

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[26] Exhibit G to the Joint Motion.

[27] Exhibit H to the Joint Motion.

[28] Exhibits I, J, K, L, M, N and P to the Joint Motion.

However, as stated above, the notice must satisfy the content requirements of both rules.

Rule 23(c)(2) requires that the notice "advise each member that (a) the court will exclude the member from the class if the member so requires by a specified date; (b) the judgment, whether favorable or not, will include all members who do not request exclusion; and (c) any member who does not request exclusion may, if the member desires, enter an appearance through counsel." Courts have also held that "the notice required by subdivision (c)(2) must contain information that a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the class and be bound by the final judgment." *In re Nissan*, 552 F.2d at 1105.

Rule 23(e) simply states that "notice of the proposed ... compromise shall be given to all members of the class in such manner as the court directs." Thus, the Third Circuit has observed that Rule 23(e) "commits the form of the notice to the court's discretion." *Zimmer Paper Prods.*, 758 F.2d at 90. The court should, however, ensure that the notice "apprise[] prospective [class] members of the terms of the Proposed Settlement, the identity of persons entitled to participate in it[,] and the options that are open to the [class] members in connection with the proceedings." *In re Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910, 924 (S.D.N.Y. 1991), *aff'd*, 960 F.2d 285 (2d Cir. 1992). In other words, the notice should contain enough information about the settlement to enable class members to make an informed choice. *In re Corrugated Container Antitrust Litig.*, 643 F.2d 195, 223 (5th Cir. 1981). Also, the description of the proposed settlement must be "neutral," *In re Nissan*, 552 F.2d at 1105, and amenable to "lay comprehension." *Kyriazi* v. *Western Electric Co.*, 647 F.2d 388, 395 (3d Cir. 1981).

Items to be considered for inclusion in the Rule 23(e) notice are (1) a description of the class, (2) a statement of the purpose, time, and place for the settlement hearing, (3) a description of the case, including the contentions of the complaint and a summary of the proceedings before settlement, (4) a description of the proposed settlement, (5) an explanation that attorneys' fees will be sought by class counsel, and (6) a description of the procedure for filing objections to the settlement, for obtaining documents, and for

making a claim against the settlement fund. 2 Newberg on Class Actions § 8.32, at 8-105. There is no requirement that the entire proposed settlement be sent to the class members.

The full Notice and the Questions and Answers satisfy the express requirements of Rule 23(c)(2). Each explains (1) that every class member has the right to exclude her/himself from the class if s/he files an exclusion request by a certain date, (2) that any judgement or settlement of the class action will bind class members who do not request exclusion, and (3) that any class member who does not request exclusion may, if s/he desires, enter an appearance in the class action through counsel. In addition, a simple, one-page "Exclusion Request Form" is attached to the full Notice. Any class member who wishes to exclude her/himself from the class may do so simply by returning this form to the Post Office Box to be maintained by the settling parties in the name of the Court Clerk.

With respect to the notice of the proposed settlement under Rule 23(e), the full Notice contains both a short summary of the proposed settlement in the body of the Notice and a more extensive summary in an Appendix to the Notice. The primary features of the settlement are also summarized in the Questions and Answers document. In addition, both the full Notice and the Questions and Answers inform class members that they may obtain a complete copy of the entire Stipulation of Settlement by telephoning the toll-free number. Thus, any class member may review the entire settlement agreement in detail. The full Notice also contains all six items suggested by Professor Newberg in the passage cited above. Thus I find that the individual notification documents "contain information that a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the class," and thus meet the requirements of Rule 23(c)(2) and (e). *In re Nissan*, 552 F.2d at 1105.

The abbreviated versions of the notice for use in written publications and in the broadcast media are likewise adequate for their purposes. Each written advertisement (the newspaper advertisement, the camera-ready materials, and the press release) contains the three items, noted above, that are required by Rule 23(c). In addition, each written ad contains both a short summary of the proposed settlement and the toll-free number that class members may call to obtain the full notice packet.

The broadcast advertisements (the television ad and the newscast script) are similarly adequate. Neither contains the amount of information contained in the print advertising; however, each serves its goal of alerting potential class members concerning the class action and settlement, and urges class members to call the toll-free number to obtain the complete individual notice materials.

A comparison with notices approved in other cases shows that the contents of the notification materials proposed here are properly designed. The full Notice is comparable to those reprinted in the Manual for Complex Litigation § 41.41-43, at 393-97, 400-05, 408-12, and in the Appendix to 5 Newberg on Class Actions. The full Notice is also comparable to the Rule 23(c) and (2) notices used in the *Agent Orange* litigation. *In re "Agent Orange"*, 100 F.R.D. at 731-34 (Rule 23(c) notice), *aff'd*, 818 F.2d 145 (2d Cir. 1987); *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 867-74 (E.D.N.Y. 1984) (Rule 23(e) notice). The abbreviated notices for print and broadcast are comparable to those reprinted in the Manual for Complex Litigation § 41.41, at 398, in the Appendix to 5 Newberg on Class Actions, and to those used in the *Agent Orange* litigation, 100 F.R.D. at 734-35, 597 F. Supp. at 874-75.

In sum, I have reviewed the contents of the entire set of notification materials described above, and I believe that these materials satisfy the requirements of Rules 23(c)(2) and (e) and the due process clause of the Constitution. However, taking into consideration the comments and suggestions of the objectors and the *amicus curiae*, I also believe that some of the notice materials can more clearly alert the reader that they may be a member of the class whether or not they are currently suffering from an asbestos-related condition. This class action, although not the first of its kind, is somewhat unusual in that it involves an asbestos personal injury class that includes as members persons who have not yet been diagnosed with an asbestos-related injury. Because I believe that it is extremely important that these persons be alerted to their potential membership in the class, I will order that some clarifying language be added or made more prominent in some of the notice materials.

The notice materials define the scope of the class in some detail. They specifically explain that the class does not include

"environmental exposure," such as any possible exposure by office workers in buildings where asbestos products were present. To make this still clearer, the full Notice and the print advertisement contain a list of asbestos-containing products and a list of occupations where exposure potentially occurred. Some of the notice materials also notify readers that they may be members of the class "whether or not [they] are presently suffering from an asbestos-related medical condition." This information appears on page three of the full Notice. Again, this information is important to alert those who might not otherwise believe that they are members of the class. Thus, I will order that this information be mentioned in the "ATTENTION" line on page one of the full Notice. For the same reason, I will order that this information be mentioned in the larger print sections of the print advertisement attached as Exhibit C to the Joint Motion. Finally, I will order that this information be added to the camera-ready materials and the 30-second television ad.[29]

In sum, I find that the contents of the notice satisfy the requirements of Rules 23(c)(2) and (e) and the due process clause of the Constitution, and that, after the minor changes discussed above, all of the proposed notice materials may be used to provide Rule 23 notice to the class.[30]

3. General Objections to the Plan and Contents

In opposing the notice plan and the contents of the notice materials broadly, the objectors contend that, regardless of the content of the plan, it cannot satisfy the requirements of Rule 23(c)(2) or due process. The objectors raise essentially three arguments. First, they contend that the preliminary certification

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[29] Due to the limitations of these media, the information can be presented in a much more abbreviated form.

[30] In reviewing the adequacy of the notice materials, I have not addressed all of the arguments made by the various objectors. I am aware that the settling parties have agreed with several of the suggestions offered by the objectors and have amended the notice materials accordingly. After having heard extensive oral argument on this issue, as I have on all others in this case, I find that the remaining objections to the notice materials are unpersuasive.

order provides inadequate information to class members as to whether they are in the class and that this deficiency cannot be cured by the notice without amending the class definition. In addition, objectors suggest that even with the additional occupational information provided in the notice, persons who worked in those occupations may be unaware or may have forgotten their asbestos exposure and consequently will not know that they are in the class. Second, objectors contend that the case law provides that "future claimants, who do not yet manifest physical injury, cannot as a matter of due process be provided adequate notice. Finally, objectors argue that even if absent class members are able to determine whether they are class members, notice is inadequate because class members are compelled to decide whether to remain in the class or opt out at a time when they do not yet know the extent of their injuries.

The objectors first argument has two parts. Initially, the objectors contend that the description of the class in the notice differs from the class definition in the preliminary certification order of January 29, 1993. The objectors contend that the notice is therefore inadequate unless the certification order is amended. The objectors are incorrect in asserting, however, that the additional information included in the notice, identifying specific asbestos-containing products, further describing what constitutes "occupational exposure," and listing relevant occupations, is inconsistent with the definition of the class as preliminarily certified. The objectors themselves have not identified any inconsistencies.

In any event, it is the certification order, and not the notice, that determines the res judicata effect of the judgment that will be entered in this case. Thus, any modifications in the class definition that may be called for can be made at the time the final certification order is entered, that is, after and if the settlement is approved. It is appropriate to modify the class definition at that time if, during the course of the proceedings, the scope of the class has changed. *See, e.g.*, *Montelongo* v. *Meese*, 803 F.2d 1341, 1352 (5th Cir. 1986) (approving post-trial modification of class definition pursuant to court's "broad authority to redefine the class 'as appropriate in response to the progression of the case . . . ") (quoting *Richardson*

v. *Byrd*, 709 F.2d 1016, 1019 (5th Cir. 1983)), *cert. denied*, 481 US. 1048 (1987).

As a second prong of this argument, the objectors suggest that even if the notice and certification order were congruent, the notice inadequately advises potential class members of their rights because people may not be aware of asbestos exposure in their jobs, or "may have forgotten" their exposure. Baron Brief at 18. I am satisfied, however, that after more than 20 years of extensive litigation, over 15 bankruptcies (many with extensive notice), and massive publicity about asbestos, persons who have had occupational exposure to asbestos are aware of that exposure. There is no reason to believe, as objectors assert without support, that the notice does not provide a sufficient explanation of the scope of the class such that persons who may be in the class would be unable to determine their status.

In short, the notice provides an adequate definition of the class, and that definition is consistent with the preliminary certification order. Any modifications in the class definition, if warranted, can potentially be made at the conclusion of the proceedings. And, given this adequate description of the class in the notice, potential class members will be able to ascertain whether they are in the class.

The objectors argue that persons who have been exposed to asbestos, but who have no presently manifested asbestos-related condition, cannot be provided with effective notice. The objectors contend that such persons "could not reasonably believe that they have any 'rights' to give up," and that they will simply treat the notice as "junk mail." Baron Brief at 19. In essence, the objectors argue that adequate notice can never be given to persons without manifested injuries, citing *Schweitzer* v. *Consolidated Rail Corp.*, 758 F.2d 936 (3d Cir.), *cert. denied*, 474 US. 864 (1985).

Schweitzer, however, does not so hold. The issue in *Schweitzer* was whether plaintiffs' asbestos personal injury claims were discharged in bankruptcy where the plaintiffs had no manifest injury at the time of the bankruptcy. The court held that these claims were not discharged as a matter of statutory bankruptcy law since these persons had no cause of action under the Federal Employer's Liability Act at that time. *Id.* at 942-43. While the

court expressed certain reservations about due process, were it to have concluded that the claims were discharged, those concerns do not apply here. First, unlike the notice proposed here, the notice given in *Schweitzer* was not directed to "future" asbestos claimants and, even if received, did not include any information notifying such claimants that their rights were affected by the proceeding. Second, the Conrail reorganization plan at issue in *Schweitzer* made no provision for the compensation of such claimants. Accordingly, had the court held the claims discharged, all of the personal injury claimants would have been denied compensation entirely, with no prior notice.

Thus, while the court in *Schweitzer* stated that plaintiffs there could not reasonably have been expected to file claims against Conrail before their injuries became manifested, it did so in the context of those facts. Such facts are not comparable to the situation here, where notice will be specifically directed to "future" claimants and will inform them that they are included in the class, and where the settlement at issue will provide compensation for qualifying claimants who develop asbestos-related conditions in the future.

While *Schweitzer* is inapposite, other cases support the constitutionality of the proposed notice plan.[31] These cases have approved notice to classes including persons with unmanifested injuries. The objectors argue that these cases are not persuasive authority because all but one — the *Agent Orange* case — arose out of bankruptcies, or because they involved exposures to products that were less likely to be unknown or forgotten by the exposed persons. Such attempts to distinguish this line of cases, however, must fail.

The cases cited, except for *Agent Orange*, did arise in the bankruptcy context. Nevertheless, in all of these cases, the rights of "future" claimants were being adjudicated, and due process

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[31] See *In re "Agent Orange"*, 100 F.R.D. at 728-29, aff'd, 818 F.2d at 167-69; *In re "Agent Orange"*, 996 F.2d at 1435; *In re Johns-Manville Corp.*, 78 B.R. at 408-09; *In re Joint E. & S. Dist. Asbestos Litig.*, 129 B.R. at 834-37; *Unarco Bloomington Factory Workers* v. *UNR Industries, Inc.*, 124 B.R. 268, 271-72, 283 (N.D. Ill. 1990).

therefore required that notice be given to advise the "future" claimants of their rights to appear and participate in proceedings. Since these bankruptcy proceedings would significantly impact the remedies of "future" claimants against the debtor companies, notice in these cases is just as important — if not more important — than the notice in an opt-out class such as this one, where all claimants, whether they opt out or not, will be provided with a significant remedy against the CCR defendants.

The objectors further argue that even the Agent Orange decisions, *In re "Agent Orange"*, 100 F.R.D. at 718, *aff'd*, 818 F.2d 145 (2d Cir. 1987); 996 F.2d at 1425, which concededly involved a non-bankruptcy Rule 23(b)(3) class action, should be disregarded as precedent. According to the objectors, the Second Circuit in the *Ivy* decision misinterpreted the requirements of the due process clause by holding that, given able representation of absent class members, adequate notice to such class members is unnecessary. 996 F.2d at 1435. Such a reading of the case is wrong. The Second Circuit in *Ivy* referred to its earlier holding that the notice plan was adequate and stated that "[its] view ha[d] not changed." *Id.* Noting that due process "is a flexible concept," the Second Circuit concluded that, upon balancing the relevant factors, including "society's interest in the efficient and fair resolution of large-scale litigation," the fairness of the settlement, and the adequacy of class counsel, all due process requirements were satisfied. *Id.*

Thus, the Second Circuit in *Ivy* did not dispense with notice requirements, as it could not have done. Rather, it simply held that other factors may enter into the due process calculus, and that, given the circumstances present there, the notice given was adequate. This holding is consistent with Supreme Court precedent. See *Mullane*, 339 U.S. at 314-15 (due process requires "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections .... [I]f with due regard for the practicalities and peculiarities of the case these conditions are reasonably met, the constitutional requirements are satisfied.").

In sum, there is ample support for the constitutionality of the proposed notice plan in this case. These cases all approved notice

campaigns directed to "future" claimants. *Schweitzer* is not to the contrary. Consequently, the objectors' argument that notice cannot be provided as a matter of constitutional law is without foundation.

The objectors finally argue that it is unfair to require persons without presently manifested injuries to choose between remaining in the tort system and participating in the proposed class settlement. They thus contend that, even assuming the receipt of notice about their options, class members who have not yet manifested an asbestos-related condition do not possess sufficient information to make an informed decision whether to opt out.

In this case, however, class members are not forced by this settlement to make any change in their existing situation at all. Rather, if a class member who has no presently-manifested injury wishes to maintain the *status quo*, he or she may do so simply by opting out. What the settlement offers to such claimants is simply an option to choose a different compensation system in the event that they become ill. This is not a case where class members are forced to chose between various options or fear losing their rights altogether. In short, the class members are not forced into an [sic] premature decision.

I find therefore, that the objectors arguments that notice to the members of the class can never satisfy the requirements of Rule 23 and the due process clause are without merit.

III. CONCLUSION

I conclude that the proposed settlement is fair for the preliminary purpose of sending notice to the class. Also, I conclude that the extensive plan for dissemination of notice designed by the settling parties, and the contents of the notice materials satisfy the requirements of Rules 23(c)(2) and (2) and the due process clause of the Constitution.

Accordingly, the schedule for the dissemination of the notice and the final fairness hearings will be as follows: the plan for dissemination of notice will be implemented starting on November 1, 1993 and ending on December 27, 1993, the mid-term report will be due on December 6, 1993 (one week after the end the first four-week period), the deadline for opting out of the class will be January 24, 1994, the final report will be due on February 16,

1994, and the final fairness hearing will begin at 9:30 a.m. on February 22, 1994, and continue from day to day until completed.

An appropriate order follows.

* * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 93-0215

EDWARD J. CARLOUGH, et al.,

Plaintiffs,

v.

AMCHEM PRODUCTS, INC., et al.,
Defendants and third party
plaintiffs,

v.

ADMIRAL INSURANCE COMPANY, et al.
Third party defendants.

ORDER

AND NOW, this 27th day of October, 1993, upon consideration of the joint motion of the settling parties for approval of notice to the class (Document No. 445), for the reasons discussed in the attached memorandum, having found that the proposed settlement is fair for the preliminary purpose of sending notice to the class, and having found that the plan for dissemination of notice and the contents of the notice materials satisfy the requirements of Fed. R. Civ. P. 23(c)(2) and 23(e) and the due process clause of the Constitution, it is hereby ORDERED that the motion is GRANTED and the plan for dissemination of notice and the contents of the notice materials are APPROVED in

accordance with the instructions in the attached memorandum.[1]

It is FURTHER ORDERED that the schedule for the dissemination of the notice and the final fairness hearings is as follows:

1. The plan for dissemination of notice will be implemented starting on November 1, 1993 and ending on December 27, 1993;[2]

2. The settling parties will file a mid-term report with the Court, as discussed on pages twenty-four to twenty-five (pp. 24-25) of the attached memorandum, no later than 4:30 p.m. on December 6, 1993 (one week after the end the first four-week period);

3. The deadline for opting out of the class will be January 24, 1994;

4. The settling parties will file their sealed final report with the Court in accordance with the instructions on page twenty-five (p. 25) of the attached memorandum no later than 4:30 p.m. on February 16, 1994;

5. The final fairness hearing will begin at 9:30 a.m. on February 22, 1994 in Courtroom 11A at the United States Courthouse, Philadelphia, Pennsylvania, and continue from day to day until completed.

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[1] Specifically, the settling parties shall amend the contents of the notice in accordance with the instructions on pages thirty-five to thirty-six (pp. 35-36) of the attached memorandum and as agreed to in the CCR defendants' reply memorandum.

[2] Because the changes in the plan for dissemination of notice and in the contents of the notice materials are few, the settling parties may submit the final notice complete with the changes agreed to in the CCR defendants' reply memorandum and the changes directed by this Memorandum and Order on November 1, 1993.

This is not a final, appealable order.[3]

/s/ LOWELL A. REED, JR., J.

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[3] The Court finds that it is not in the interest of the parties to this class action to delay dissemination of the notice pending appellate review. Thus, the Court will not certify this Order for interlocutory appeal pursuant to 28 U.S.C. § 1292(b).